

BRB No. 97-0903 BLA

MARY C. BANKS)	
(Widow of LESTER BANKS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Wolodymyr Cybriwsky, Prestonsburg, Kentucky, for claimant.

Cathryn Celeste Helm (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order - Denying Benefits (95-BLA-2346) of Administrative Law Judge Richard K. Malamphy on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge noted the background of this case, relied on *Johnson v. Peabody Coal Co.*, 26 F.3d 618, 18 BLR 2-244 (6th Cir. 1994) to find that pneumoconiosis was not a substantially contributing cause of death, and determined that the evidence did not establish that the miner's

¹ Claimant is Mary C. Banks, the widow of Lester Banks, the miner. During his life, the miner was awarded federal black lung benefits. Director's Exhibit 17. The instant appeal concerns only the survivor's application for benefits.

death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant asserts that the medical evidence establishes that the miner's pneumoconiosis was a substantially contributing cause of his death by suicide. Claimant maintains that the instant case is distinguishable from *Johnson*. Claimant also asserts that the miner had pneumoconiosis and that he was totally disabled by his pneumoconiosis. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the administrative law judge's denial of benefits. The Director contends that the administrative law judge's findings are consistent with *Johnson* and the Board's decision in *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).²

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's findings, the arguments raised on appeal, the evidence of record, and the applicable regulations and case law, we hold that the administrative law judge's findings are supported by substantial evidence and are therefore affirmed. The only issue before the administrative law judge was whether the miner's death was due to pneumoconiosis. See Hearing Transcript at 6. In survivors' claims filed on or after January 1, 1982, the regulations provide that a miner's death will be considered due to pneumoconiosis when competent medical evidence establishes that the miner's death was due to pneumoconiosis or was a substantially contributing cause to the miner's death. 20 C.F.R. §718.205(c)(1)-(2). The regulations also provide that:

survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.

² We affirm the administrative law judge's finding that the record does not establish the existence of complicated pneumoconiosis and that claimant therefore was not entitled to benefits pursuant to 20 C.F.R. §718.205(c)(3) as this finding has not been challenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

20 C.F.R. §718.205(c)(4). The evidence of record relating to the cause of the miner's death includes the death certificate and Dr. Wicker's opinion. The death certificate indicates that the miner died due to cardiorespiratory failure due to a self inflicted gunshot wound to the head, see Director's Exhibits 2, 8. Dr. Wicker stated that the miner was "despondent over the degree of his disability resulting from his pneumoconiosis. Because of this, it is my medical opinion that [he] suffered a severe depressive disorder resulting directly from his pneumoconiosis which caused in it's [sic] finality, the patient's death." Director's Exhibit 8; see also Director's Exhibits 4, 15, 16; Claimant's Exhibit 1.³

We affirm the administrative law judge's decision, relying upon *Johnson*, that claimant has not established that the miner's pneumoconiosis was a substantially contributing cause of the miner's death by suicide. As the administrative law judge explained in his Decision and Order, the Sixth Circuit held in *Johnson* that the survivor of a miner who commits suicide because of the depressive effects of pneumoconiosis is not entitled to benefits because the Black Lung Act is not a general workers' compensation statute: it is a limited piece of legislation intended to address a medical condition which frequently affects miners. Decision and Order at 8. *Johnson* 26 F.3d at 621, 18 BLR at 2-253. See 20 C.F.R. §718.205(c); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); Director's Exhibits 2, 4, 8, 15, 16; Claimant's Exhibit 1. The administrative law judge reasonably determined that claimant did not satisfy her burden of establishing entitlement. See *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). Finally, although the miner in *Johnson* had been denied benefits on his living miner's claims, we hold that this fact is not enough to distinguish the instant case from *Johnson*, particularly since the court noted that the miner in *Johnson* did have pneumoconiosis. See *Johnson*, 23 F.3d at 619, 18 BLR at 2-247.

³ Dr. Wicker stated that the miner "exhibited increased depressive symptoms related to his underlying pneumoconiosis which I believe culminated ultimately in his decision to take his own life." Director's Exhibit 4. Dr. Wicker also stated that the miner "was quite despondent and depressed over his progressive disability relating to his Black Lung." Director's Exhibits 15, 16. In his deposition, Dr. Wicker stated "the stress and strain and the dawning realization of the limits of [the miner's] life resulted in this depression that ultimately resulted in the action of taking his own life." Claimant's Exhibit 1 at 15-16.

Accordingly, the administrative law judge's Decision and Order -Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge