

BRB No. 03-0491 BLA

PEGGY HOWERTON)	
(Widow of ROOSEVELT HOWERTON))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	DATE ISSUED: 01/30/2004
CORPORATION)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	DECISION and ORDER

Party-in-Interest

Appeal of the Decision and Order of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (02-BLA-0303) of Administrative Law Judge Michael P. Lesniak denying survivor's benefits 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). After accepting the parties' stipulation that the miner was engaged in coal mine employment for at least twenty-four years, the administrative law judge found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant challenges the administrative law judge's finding pursuant to 20 C.F.R. §718.205(c). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated 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 Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of survivor's benefits under Section 718.205(c). Claimant suggests that the miner's death certificate and the evidence demonstrating total disability is sufficient to establish that the miner's death was due to pneumoconiosis. Claimant argues that because employer conceded the existence of pneumoconiosis in the miner's claim, employer may not relitigate the issue and the opinions of Drs. Branscomb, Renn and Fino should carry "no weight" because none diagnosed pneumoconiosis. Claimant's Brief at 4.

Claimant's arguments are without merit. The administrative law judge found that "even assuming the presence of simple pneumoconiosis, the record does not contain any reasoned or documented opinion which established that pneumoconiosis caused, substantially contributed, or hastened the miner's death." Decision and Order at 15. This finding is supported by substantial evidence. The administrative law judge considered all the relevant evidence under Section 718.205(c), consisting of the miner's death certificate

¹ Claimant is the surviving spouse of Roosevelt Howerton, a miner who was awarded black lung benefits on February 18, 1987 and died on May 27, 1999. Director's Exhibits 11, 26. Claimant filed the current application for black lung survivor's benefits on June 14, 1999. Director's Exhibit 1.

and the opinions of Drs. Branscomb, Renn and Fino. The administrative law judge found that the miner's death certificate listed respiratory failure due to advanced chronic obstructive pulmonary disease as the immediate cause of death and pulmonary embolism as another significant condition contributing to the miner's death. Decision and Order at 9; Director's Exhibit 11. The administrative law judge further found that Drs. Branscomb, Renn and Fino, all pulmonary specialists, opined that pneumoconiosis did not play any role in the miner's death. Decision and Order at 13; Employer's Exhibits 1-5, 7, 8.

The administrative law judge also found that the overwhelming preponderance of the relevant medical evidence is negative for complicated pneumoconiosis,¹ and that the death certificate, even if it specifically listed pneumoconiosis as the cause of death, is not by itself a reasoned and/or documented medical opinion. Decision and Order at 14. In addition, the administrative law judge found that the disability determination by the West Virginia Occupational Board and the medical reports of Drs. Rasmussen and Daniel are at least twelve years old and do not address the issue of death due to pneumoconiosis. Decision and Order at 14; Director's Exhibits 25, 26. We affirm as supported by substantial evidence, the administrative law judge's finding that the medical evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Willis v. Birchfield Mining Co.*, 15 BLR 1-59 (1991); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988).

¹ We affirm, as unchallenged on appeal, the administrative law judge's finding that the evidence is insufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 13. The administrative law judge, therefore, properly found that claimant was precluded from establishing that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(3). *Id.*

Accordingly, the administrative law judge's Decision and Order denying survivor's benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge