

BRB No. 04-0417 BLA

BLANCHE T. MARTIN )  
(Widow of JOHN E. MARTIN) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 PEABODY COAL COMPANY ) DATE ISSUED: 01/13/2005  
 )  
 and )  
 )  
 PEABODY INVESTMENTS, )  
 INCORPORATED )  
 )  
 Employer/Carrier- )  
 Respondent )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Blanche T. Martin, Pickerington, Ohio, *pro se*.

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

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIUM:

Claimant, without the assistance of counsel, appeals the Decision and Order – Denial of Benefits (02-BLA-5269) of Administrative Law Judge Thomas F. Phalen, Jr. rendered on a survivor’s 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 miner died on April 4, 2001, and claimant filed her application for survivor’s benefits on September 14, 2001. Director’s Exhibit 2. The district director denied benefits and claimant requested a hearing, which was held on June 24, 2003. Director’s Exhibits 16, 17.

In the ensuing Decision and Order – Denial of Benefits, the administrative law judge found that claimant failed to establish that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or that pneumoconiosis was a substantially contributing cause of the miner’s death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance of the denial of benefits, but asserting that the administrative law judge erred in relitigating the issue of the existence of pneumoconiosis in the survivor’s claim. Employer further asserts that the administrative law judge abused his discretion in excluding evidence submitted by employer in excess of limitations set forth at 20 C.F.R. §725.414. The Director, Office of Workers’ Compensation Programs (the Director), responds, disagreeing with employer’s argument that the administrative law judge was collaterally estopped from relitigating the issue of the existence of pneumoconiosis and urging affirmance of the denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). The Board’s scope of review is defined by statute. The administrative law judge’s Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 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).

To establish entitlement to survivor’s benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §718.205(a)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). For survivor’s claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death. 20 C.F.R.

§718.205(c)(2), (4). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Mills v. Director, OWCP*, 348 F.3d 133, 23 BLR 2-12 (6th Cir. 2003); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Review of the relevant medical records indicates that Dr. Rothe admitted the miner to the hospital on March 22, 2001, noting that he had arrived in full arrest after being found in a car at the side of the road with no signs of trauma. Claimant's Exhibit 1. The miner was resuscitated but remained unresponsive. During his hospitalization, the miner was treated by Drs. Archer, Klein, Steinman, Taylor and Lovewalker. Claimant's Exhibit 1; Director's Exhibits 5, 6. In reports dating from March 22 to March 27, 2001, the physicians diagnosed the miner as having suffered an acute myocardial infarction with resulting ventricular fibrillation, respiratory failure and cerebral anoxia. While several physicians noted that the miner had a history of chronic obstructive pulmonary disease, none related it to coal dust exposure. Director's Exhibits 5, 6. The miner did not respond to treatment, progressed to a vegetative state and died on April 4, 2001. Claimant's Exhibit 1; Director's Exhibit 4. The miner's death certificate listed the immediate cause of death as "hypoxic encephalopathy," due to "cardiac arrest" due to "coronary artery disease." Director's Exhibit 4. No other causes or conditions were listed. *Id.* No autopsy was conducted. In a discharge summary dated April 14, 2001, Dr. Lovewalker entered the final diagnoses as ventricular fibrillation, acute myocardial infarction, acute respiratory failure, anoxic brain damage, coma, chronic airway obstruction, peripheral vascular disease, coronary artery disease, old myocardial infarction, hypertension, and encounter of palliative care. Claimant's Exhibit 1.

Pursuant to 20 C.F.R. §718.205(c), the administrative law judge considered all of the relevant medical evidence and found that, assuming *arguendo* the existence of pneumoconiosis, "the evidence is clear that Miner's death was the result of the ventricular fibrillation and resulting hypoxic encephalopathy he suffered while driving his car on March 22, 2001. There is absolutely no evidence in the record that Miner's death was caused or hastened by pneumoconiosis." Decision and Order at 13. Therefore, the administrative law judge concluded that claimant failed to meet her burden to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c).

Claimant bears the burden of proving that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(a)(3). As the administrative law judge found, the record contains no evidence linking the miner's death to pneumoconiosis. Substantial evidence supports the administrative law judge's finding that pneumoconiosis was not a

substantially contributing cause of the miner's death. Accordingly, we affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.205(c).

Because claimant has failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), a necessary element of entitlement in a survivor's claim, we affirm the denial of benefits.<sup>1</sup> *See Anderson, supra; Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*).

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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<sup>1</sup> As we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis, we need not address employer's additional allegations of error in the administrative law judge's decision to exclude employer's evidence pursuant to 20 C.F.R. §725.414 and to relitigate the issue of the existence of pneumoconiosis. Any error therein is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); *see also Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).