

BRB No. 06-0618 BLA

MARY ANN M. KOCH)
(Widow of WILMER C. KOCH))
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED: 01/18/2007
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT)
 OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Mary Ann M. Koch, Franklinville, New Jersey, *pro se*.

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order (05-BLA-5801) of Administrative Law Judge Robert D. Kaplan denying 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). This case involves a survivor's claim filed on February 12, 2004.² After crediting the miner with seventeen years of coal mine

¹Claimant is the surviving spouse of the deceased miner who died on January 2, 2004. Claimant's Exhibit 1.

²The miner filed a claim for benefits on October 22, 1986. Director's Exhibit 1. On

employment, the administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202 and 718.203, as stipulated by the parties. However, 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. Claimant generally contends that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's 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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

Because the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).³ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director*,

February 24, 1987, the district director awarded benefits on the miner's claim. *Id.*

³Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.
- (4) However, survivors are not eligible for benefits where the miner's death was caused by 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.
- (5) 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).

OWCP, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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); *see Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

In his consideration of whether the evidence was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), the administrative law judge permissibly found that the miner's amended death certificate, standing alone and without the benefit of an autopsy, was insufficient to establish that the miner's death was due to pneumoconiosis.⁴ Decision and Order at 8; *See generally Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997) (The mere statement of a conclusion by a physician, without any explanation of the basis for that statement, does not take the place of the required reasoning).

Dr. Dickstein was one of several physicians who treated the miner during his terminal hospitalization. After reviewing the miner's medical records, Dr. Dickstein prepared a November 15, 2005 report in which he stated:

In reviewing the records and especially in reviewing the notes from Dr. Al Belli, who is a pulmonologist and the attending on the case and who knew [the miner] quite well from his hospitalization, it is apparent that the patient presented with respiratory insufficiency. This most likely was not solely based on a cardiac disorder as evidenced by some of the testing that was done in the hospital. He likely had a pneumonia and this most likely was initiated in part by his general debility secondary at least in part to his black lung disease as well as to his previous bout of lung cancer.

Certainly, it would be my opinion that his coal miner disease played a role in his initial presentation insofar as its weakening effects on the patient and its contribution to chronic airway disease, which in turn made him susceptible to higher pulmonary artery pressures as well as pneumonia.

Claimant's Exhibit 3.

⁴Dr. Dickstein completed the miner's original death certificate, listing the following causes of death: (1) natural causes; (2) renal failure; and (3) congestive heart failure. Director's Exhibit 3. Dr. Dickstein subsequently amended the miner's death certificate to include the following causes of death: (1) renal failure; (2) black lung disease with secondary congestive heart failure; and (3) diabetes mellitus. Claimant's Exhibit 1.

The administrative law judge acted within his discretion in discrediting Dr. Dickstein's opinion because he found that it was not sufficiently reasoned. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 7. The administrative law judge properly found that Dr. Dickstein did not explain how the underlying documentation supported his opinion. *Id.*

Because the administrative law judge properly discredited the only medical opinion evidence supportive of a finding that the miner's death was due to pneumoconiosis,⁵ we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁶

In light of our affirmance of the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718.

⁵Dr. Sherman is the only other physician to address the cause of the miner's death. In a report dated September 19, 2004, Dr. Sherman opined that the miner died from complications of renal failure. Director's Exhibit 7. Although Dr. Sherman found that respiratory failure was present, he opined that this was the result of renal failure and fluid overload. *Id.* Dr. Sherman further opined that there was no evidence that the miner's coal workers' pneumoconiosis caused, hastened, or contributed to his death in any way. *Id.*

After reviewing Dr. Dickstein's November 15, 2005 report, Dr. Sherman prepared a December 28, 2005 supplemental report wherein he opined that there was no connection between the miner's underlying coal workers' pneumoconiosis and his death from congestive heart failure and renal failure. Director's Exhibit 15.

⁶Because there is no evidence of complicated pneumoconiosis, the administrative law judge properly found that claimant is not entitled to the presumption set out at 20 C.F.R. §718.304. Decision and Order at 6.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge