

BRB No. 89-1414 BLA

NORMA SYKES )  
(Widow of ROY E. SYKES) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
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 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Respondent ) DECISION and ORDER

Appeal of the Decision and Order of Giles J. McCarthy, Administrative Law Judge, United States Department of Labor.

C. Randall Lowe (Yeary, Tate and Lowe, P.C.), Abingdon, Virginia, for claimant.

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

Before: STAGE, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and NEUSNER, Administrative Law Judge.\*

PER CURIAM:

Claimant, the surviving spouse, appeals the Decision and Order (86-BLA-3281) of Administrative Law Judge Giles J. McCarthy denying benefits on a

survivor's claim filed pursuant to the provisions of

\*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

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 reviewed this claim pursuant to the provisions of 20 C.F.R. Part 718, and credited the miner with four and one-quarter years of qualifying coal mine employment. The administrative law judge then found that the x-ray evidence of record failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1), that claimant failed to establish total disability due to pneumoconiosis under 20 C.F.R. §718.204, and that claimant failed to establish death due to pneumoconiosis under 20 C.F.R. §718.205.<sup>1</sup> Accordingly, benefits were denied. Claimant appeals, contending that the evidence establishes entitlement under Part 718. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance.<sup>2</sup>

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<sup>1</sup> The administrative law judge did not specifically cite the regulations at Sections 718.202(a)(1), 718.204, or 718.205, but the appropriate sections may be inferred from the administrative law judge's findings. See generally Wetzels v. Director, OWCP, 8 BLR 1-139, 1-140 (1985).

<sup>2</sup> The administrative law judge's findings under Section 718.202(a)(1) are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983). We need not address claimant's contention with respect to total disability

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due to pneumoconiosis under Section 718.204, as it is inapplicable to a survivor's claim, such as this one, filed after January 1, 1982. See 20 C.F.R. §718.205(c); Director's Exhibit 1; Neeley v. Director, OWCP, 11 BLR 1-85 (1988).

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. §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 arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence, and contains no reversible error. Claimant contends that the diagnosis of moderate chronic obstructive pulmonary disease, contained in the hospital records of the miner's last illness, establishes that pneumoconiosis contributed to the miner's death under Section 718.205. Claimant's Brief at 3. We disagree. The administrative law judge rationally found that the cause of death was a medical condition unrelated to pneumoconiosis under 20 C.F.R. §718.205(c)(4), based on the death certificate, which listed "squamous cell carcinoma, right upper lobe with metastasis to right supraclavicular node and liver" as the cause of death and which made no mention of pneumoconiosis as a secondary or contributing cause, and the medical opinion of Dr. Spagnolo, who determined that coal mine employment exposure did not cause or contribute to the miner's carcinoma or rheumatoid lung disease. Decision and Order at 4, 5; Director's Exhibits 4, 11, 13; see Neeley v.

Director, OWCP, 11 BLR 1-85 (1988). Consequently, we affirm the administrative law judge's findings under Section 718.205 as they are supported by substantial evidence.<sup>3</sup>

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

SO ORDERED.

BETTY J. STAGE, Chief  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

FREDERICK D. NEUSNER  
Administrative Law Judge

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<sup>3</sup> We need not address claimant's contention that the administrative law judge erred in failing to find that claimant established the existence of pneumoconiosis, as the administrative law judge's finding that the miner's death was unrelated to pneumoconiosis is affirmed.