

BRB No. 90-2128 BLA

MILDRED WATHEN)
(Widow of RYAN L. WATHEN))

Claimant-Petitioner)

v.)

PEABODY COAL COMPANY)

and)

OLD REPUBLIC INSURANCE COMPANY) DATE ISSUED:

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 of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Mildred Wathen, Harrisburg, Illinois, pro se.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

Before: STAGE, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and LIPSON, Administrative Law Judge.*

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (88-BLA-1668) of Administrative Law Judge

*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).

Richard K. Malamphy 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). Based on the date of filing, September 25, 1986, the administrative law judge considered the claim pursuant to 20 C.F.R. Part 718. After crediting the miner with at least 28 years of coal mine employment, the administrative law judge considered the evidence pursuant to 20 C.F.R. §718.205 and determined that claimant failed to establish that the miner's death was caused by pneumoconiosis. Accordingly, benefits were denied. Employer responds in support of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has chosen not to respond in this case.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. Stark v. Director, OWCP, 9 BLR 1-36 (1986). We 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).

Pursuant to 20 C.F.R. §718.205(c)(1) and (c)(2), the administrative law judge considered the medical evidence of record, which includes eleven interpretations of two x-rays, the miner's death certificate, and four medical reports. Of the eleven x-ray interpretations, ten are negative for the existence of pneumoconiosis. Of the ten negative x-rays, eight were read by B readers. See Director's Exhibits 11-14, 28, 29. The miner's death certificate listed the immediate cause of death as cardiopulmonary arrest due to ischemic heart disease. The death certificate also listed diabetes millitus and pneumoconiosis as conditions contributing to death but not related to the above listed cause. See Director's Exhibit 6. The record also contains medical records of the miner's hospital care which include a reference to a discussion with the miner's wife about her husband's death in which it is stated that the miner probably died from acute myocardial infarction with arrhythmias. See Director's Exhibit 11.

On March 10, 1987, Dr. Long conducted a record review and stated that the miner's death was due to an acute catastrophic cardiac event and that pneumoconiosis did not contribute to the miner's death. See Director's Exhibit 15. On August 22, 1988, Dr. Tuteur conducted a record review and stated that claimant's pulmonary problem was related to his smoking history and that the miner's coal mine employment did not contribute in any way to his death. See Employer's Exhibit 1. On November 23, 1987, Dr. Seten reviewed two x-ray forms dated December 15, 1986 and December 24, 1986 and stated that the

interpretations confirm the presence of pneumoconiosis in the miner and that "one could assume that there was increased work load on the heart because of the lung changes and this could be a contributing factor in any cardiac disease." See Director's Exhibit 27.¹

Upon weighing this evidence, the administrative law judge noted that the December 24, 1986 x-ray interpretation, which was relied upon by Dr. Seten to establish the existence of pneumoconiosis, was read as negative for pneumoconiosis on seven occasions. See Decision and Order at 5; Director's Exhibits 13, 28, 29. The administrative law judge also noted that Dr. Tuteur pointed out that there is no documentation of pulmonary impairment as pulmonary function tests were not conducted, and as the x-ray evidence did not substantiate the presence of pneumoconiosis. The administrative law judge further found that Dr. Tuteur stated that the miner's shortness of breath was consistent with manifestations of heart disease. See Decision and Order at 5; Employer's Exhibit 1. The administrative law judge then permissibly determined that the evidence of record was insufficient to establish that pneumoconiosis was a substantially contributing cause or factor in the death of the miner. See Lafferty v. Cannelton Industries, Inc., 12 BLR 1-190 (1989). As a result, the administrative law judge's finding that claimant failed to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(1) and (c)(2) is supported by substantial evidence and is affirmed.

The administrative law judge then properly found that claimant did not establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(3) as the presumption in 20 C.F.R. §718.304 does not apply because there is no evidence of complicated pneumoconiosis in the record. The administrative law judge next permissibly found that claimant did not establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(4) as the evidence supports a conclusion that the miner's death was caused by an acute myocardial infarction and that pneumoconiosis did not contribute to his death. See Decision and Order at 6; Lafferty, supra. As a result, the administrative law judge's findings that claimant did not establish death due to pneumoconiosis pursuant 20 C.F.R. §718.205(c)(3) and (c)(4) are affirmed as they are supported by substantial evidence.

¹Dr. Seten reviewed an x-ray which was read by Dr. Pitman, a B reader, as 1/1 on December 15, 1986 and an x-ray which was read by Dr. Cole, a B reader, as 0/1 on December 24, 1986. See Director's Exhibits 12, 13.

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

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

SHELDON R. LIPSON
Administrative Law Judge