

BRB No. 90-2220 BLA

MARY PETRUSH)
(Widow of JOHN PETRUSH))
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED:
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

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

Daniel G. Walter (Pawlowski, Creany & Tulowitzki), Ebensburg, Pennsylvania, for claimant.

Dorothy L. Page (Marshall J. Breger, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: STAGE, Chief Administrative Appeals Judge, DOLDER, Administrative Appeals Judge, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Claimant¹ appeals the Decision and Order (87-BLA-3034) of Administrative

Law Judge Michael F. Colligan denying benefits 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 administrative law judge reviewed this claim pursuant to the provisions of 20 C.F.R. Part 718, and credited the miner with twenty-five years of qualifying coal mine employment, but found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202. Accordingly, benefits were denied. Claimant appeals, contending that the administrative law judge failed to properly credit the lay testimony of record. The Director, Office of Workers' Compensation Programs, responds, urging affirmance.

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. §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).

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, claimant must establish, by a preponderance of the evidence, that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or that the miner suffered from complicated pneumoconiosis. See 20 C.F.R. §718.205(c);

Dillon v. Peabody Coal Co., 11 BLR 1-113 (1988); Neeley v. Director, OWCP, 11 BLR 1-85 (1988). Survivors are precluded from entitlement to benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition unrelated to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death. See 20 C.F.R. §718.205(c)(4); Haduck v. Director, OWCP, 14 BLR 1-29 (1990); Neeley, supra.

After careful 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's sole contention on appeal is that the administrative law judge erred in failing to credit the testimony of the miner's son, which claimant maintains is sufficient to establish entitlement pursuant to Part 718. We disagree. Contrary to claimant's arguments, the administrative law judge properly found that although the miner's son testified that his father had difficulty breathing and that he believed his father's respiratory problems were attributable to coal mine employment exposure, the record contained no evidence to substantiate this belief. Decision and Order at 3, 5. Consequently, the administrative law judge reasonably found that the evidence of record was insufficient to establish entitlement pursuant to Part 718, as there were no presumptions available to claimant; the record contained no x-rays, biopsies or autopsies; and the only medical evidence of record consisted of the miner's death

certificate, which listed the cause of death as "shock & hemorrhage following fracture of left leg due to being caught in a cutting machine." Decision and Order at 5; Director's Exhibit 6. As the administrative law judge's findings are supported by substantial evidence, we must affirm his denial of benefits. See Neeley, supra.

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

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge