

BRB No. 00-1108 BLA

ALENE A. SMITH)
(Widow of WILLIAM F. SMITH))

Claimant-Petitioner)

v.)

SAGINAW MINING COMPANY)

Employer-Respondent)

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED:

DECISION and ORDER

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

Rita S. Fuchsman, Chillicothe, Ohio, for claimant.

Gregory K. Johnson (Ohio Bureau of Workers' Compensation, Black Lung Fund), Columbus, Ohio, for employer.

Mary Forrest-Doyle (Howard M. Radzely, Acting 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: SMITH and DOLDER, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order (00-BLA-0424) of Administrative Law

Judge Michael P. Lesniak 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).² The instant case involves a survivor's claim filed on May 14, 1999.³ Although the administrative law judge found that the evidence was sufficient to establish that the miner suffered from pneumoconiosis, the administrative law judge found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis. Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response brief.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001) (order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on May 21, 2001, to which claimant and the Director have responded.⁴ Based on the briefs submitted by claimant and the Director,⁵ and our review, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, the Board will proceed to adjudicate the merits of this appeal.

The Board 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).

Inasmuch as 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).⁶ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). 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 *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718. The miner's death certificate completed by Dr. King lists "black lung disease" as a contributing factor to the miner's death.⁷ Director's Exhibit 35. However, inasmuch as Dr. King provided no

explanation for his finding, the administrative law judge properly found that Dr. King's opinion was not sufficiently reasoned. *See Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 6; Director's Exhibit 35. The record does not contain any other evidence supportive of a finding that the miner's death was due to pneumoconiosis.⁸ Consequently, we affirm the administrative law judge's finding that the medical evidence is insufficient to establish that the miner's death was due to pneumoconiosis.⁹ *See* 20 C.F.R. §718.205(c); *Brown, supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge