

BRB No. 04-0866 BLA

EVA JONES)
(Widow of EDWARD JONES))
)
Claimant-Petitioner)
) DATE ISSUED: 07/18/2005
v.)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent) DECISION and ORDER

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

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, 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 McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (00-BLA-0432) of Administrative Law Judge Robert L. Hillyard 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 November 24,

¹Claimant is the surviving spouse of the deceased miner who died on January 29, 1993. Director's Exhibit 11.

1997.² After crediting the miner with 16.25 years of coal mine employment, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also 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. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also argues that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

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'Keefe 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*,

²The miner filed a claim on April 7, 1982. Director's Exhibit 16. The district director denied the claim on May 4, 1983. *Id.* By letter dated June 15, 1983, the miner's counsel requested an opportunity to submit additional evidence. *Id.* By letter dated December 2, 1983, the district director informed the miner that the Department of Labor had not received any additional evidence. *Id.* The Department of Labor informed the miner that if he failed to respond within thirty days, his claim would be administratively closed and deemed abandoned. *Id.* There is no indication that the miner took any further action in regard to his 1982 claim.

The miner filed a second claim on May 29, 1990. Director's Exhibit 17. The district director denied the claim on October 25, 1990. *Id.* There is no indication that the miner took any further action in regard to his 1990 claim.

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

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 Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *see also Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).

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 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).⁴ The administrative law judge properly found that the miner's death certificate did not support a finding that the miner's death was due to pneumoconiosis.⁵ Decision and Order at 14; Director's Exhibit 11. Although Dr. Perkins indicated that the

(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).

⁴Because no evidence of record supports a finding that pneumoconiosis was the cause of the miner's death, claimant is precluded from establishing that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(1). Moreover, because there is no evidence of complicated pneumoconiosis in the record, the administrative law judge properly found that claimant is precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. *See* 20 C.F.R. §718.205(c)(3); Decision and Order at 8.

⁵Milford B. Creekmore, a coroner, completed the miner's death certificate. Mr. Creekmore attributed the miner's death to congestive heart failure due to progressive supra-nuclear palsy. Director's Exhibit 11.

miner's coal dust related pulmonary disease caused or hastened his death, the administrative law judge properly discredited his opinion because he found that it was not sufficiently reasoned.⁶ See *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *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 14; Claimant's Exhibit 1. The record does not contain any other medical opinions regarding the cause of the miner's death. Because it is based upon substantial evidence, 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).⁷

⁶Dr. Perkins completed a questionnaire on December 11, 2003. In support of his opinion that the miner's pulmonary disease caused or hastened his death, Dr. Perkins merely stated that "[F]requent infections, and increase in pulmonary secretions along with increase [sic] stress on cardiovascular system all contributed to the hastening of [the] patient's death." Claimant's Exhibit 1. The administrative law judge noted that Dr. Perkins did not base his diagnosis on objective testing in the record. Decision and Order at 14. The administrative law judge further noted that Dr. Perkins "did not list the [m]iner's employment or smoking histor[ies]" and did not "opine how either would support or explain his diagnosis of death due to pneumoconiosis." *Id.* The administrative law judge also questioned Dr. Perkins's opinion because the doctor did not indicate any awareness of the miner's progressive paralysis and deteriorating respiratory symptoms that were documented in treatment notes from Lifetime Health Care. *Id.*

We reject claimant's contention that the administrative law judge erred in failing to accord greater weight to Dr. Perkins's opinion based upon his status as claimant's treating physician. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that there is no rule requiring deference to the opinion of a treating physician in black lung claims. *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003). The Sixth Circuit has held that the opinions of treating physicians should be given the deference they deserve based upon their power to persuade. *Id.* The Sixth Circuit explained that the case law and applicable regulatory scheme clearly provide that the administrative law judge must evaluate treating physicians just as they consider other experts. *Id.* In this case, the administrative law judge properly discredited Dr. Perkins's opinion because he found that it was not sufficiently reasoned.

⁷In light of our affirmance of 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), we need not address claimant's contentions of error regarding the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

REGINA C. McGRANERY
Administrative Appeals Judge