BRB No. 07-0867 BLA

P.E. (Widow of C.E.) Claimant-Petitioner v. EMPIRE MINING, INCORPORATED and OLD REPUBLIC INSURANCE COMPANY Employer/Carrier- Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 07/16/2008 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

P.E., Wise, Virginia, *pro se*.

Kathy L. Snyder (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Before: SMITH, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals, without the assistance of counsel,[2] the Decision and Order Denying Benefits (06-BLA-5167) of Administrative Law Judge Pamela Lakes Wood rendered 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). In a Decision and Order dated March 29, 2007, the administrative law judge credited the miner with ten and one-quarter years of coal mine employment[3] and found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), and did not 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 generally contends that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.[4]

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). The Board must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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[1] Claimant is the miner's widow. The miner's death certificate indicates that he died on July 8, 2004, of metastatic lung cancer. Director's Exhibit 9.

[2] Jerry Murphree, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Murphree is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

[3] The record indicates that the miner's coal mine employment occurred in Virginia. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[4] The administrative law judge's finding of ten and one-quarter years of coal mine employment is affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner's death, or was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(c)(1)-(4). 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); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

In finding that the x-ray evidence did not establish the existence of pneumoconiosis, the administrative law judge correctly found that the x-ray evidence consists of two readings of an October 23, 1985 x-ray. Dr. Navani, a Board-certified radiologist, interpreted the x-ray as "0/1" under the ILO classification system, a reading that does not constitute evidence of pneumoconiosis. 20 C.F.R. §718.102(b); Director's Exhibit 1. Dr. Gaziano, a B reader, interpreted the x-ray to be negative for pneumoconiosis. Director's Exhibit 1. Thus, the administrative law judge properly found this x-ray to be negative, based on the uniformly negative readings by highly qualified readers. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52, 16 BLR 2-61, 2-66 (4th Cir. 1992); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-65 (2004)(*en banc*); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-7 (1999)(*en banc on recon*.); Decision and Order at 12. In addition, the administrative law judge properly found that none of the x-ray interpretations contained in the miner's hospitalization and treatment records supported a diagnosis of pneumoconiosis. Decision and Order at 15; Director's Exhibit 12; Employer's Exhibit 1. The administrative law judge properly concluded that, therefore, the x-rays did not establish the existence of pneumoconiosis. Decision and Order at 12. We therefore affirm the administrative law judge's finding that claimant failed to meet her burden of proof pursuant to 20 C.F.R. §718.202(a)(1).

Turning to the autopsy evidence pursuant to 20 C.F.R. §718.202(a)(2), the administrative law judge accurately found that Dr. Robertson, the autopsy prosector, diagnosed poorly differentiated squamous cell carcinoma, emphysematous changes, and moderate to severe anthracosis. Decision and Order at 7, 12; Director's Exhibit 11. By contrast, Dr. Crouch, who reviewed the autopsy report and the slide specimens taken during the autopsy, agreed with Dr. Robertson's diagnosis of poorly differentiated carcinoma of the lung, but opined that the miner's lung tissue showed only coal dust

deposition with no evidence of pneumoconiosis. Decision and Order at 8-9, 13-14; Employer's Exhibit 2.

Recognizing that a diagnosis of anthracosis can constitute clinical pneumoconiosis pursuant to 20 C.F.R. §718.201(a)(1), the administrative law judge reasonably accorded greater weight to the opinion of Dr. Crouch, that the lung showed only coal dust deposition with no evidence of pneumoconiosis, because Dr. Crouch supported her conclusions with detailed reference to the microscopic findings. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 440-441, 21 BLR 2-269, 2-274 (4th Cir. 1997); Decision and Order at 13; Employer's Exhibit 2. The administrative law judge further found that Dr. Crouch's interpretation of the slides was essentially unrefuted, because while Dr. Robertson's report reflected that numerous microscopic specimens were prepared, the report did not contain any description of the microscopic findings or any discussion of those findings by Dr. Robertson. Decision and Order at 13; Director's Exhibit 11. As the administrative law judge correctly analyzed the autopsy evidence and explained her reasons for crediting the opinion of Dr. Crouch over the opinion of Dr. Robertson, the only pathologist to diagnose the existence of pneumoconiosis, we affirm the administrative law judge's conclusion that claimant failed to establish the existence of pneumoconiosis by the autopsy evidence. *See* 20 C.F.R. §718.202(a)(2)*; Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 440-441, 21 BLR at 2-274.

The administrative law judge also found, correctly, that the presumptions set forth at 20 C.F.R. §§718.304, 718.305, and 718.306 are inapplicable in this claim filed after June 30, 1982, in which there is no evidence of complicated pneumoconiosis. *See* 20 C.F.R. §§718.202(a)(3), 718.304, 718.305, 718.306; Decision and Order at 14.

In considering whether claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge reviewed the relevant evidence of record, consisting of medical reports from Drs. Paranthaman, Wheatley, and Prince, the miner's death certificate, and numerous treatment notes and hospital records.

The administrative law judge properly found that, in a report dated October 23, 1985, Dr. Paranthaman diagnosed "early changes of coal workers' pneumoconiosis," based on a "0/1" reading of the October 23, 1985 chest x-ray. Decision and Order at 6-7, 14; Director's Exhibit 1; Employer's Exhibit 3. Dr. Paranthaman also diagnosed chronic bronchitis, and indicated that it was probably due to the miner's heavy cigarette smoking and, to a lesser extent, his coal dust exposure. Decision and Order at 6-7, 14; Director's Exhibit 1; Employer's Exhibit 3. The administrative law judge permissibly accorded little weight to Dr. Paranthaman's diagnosis of early coal workers' pneumoconiosis, as unreasoned, because Dr. Paranthaman failed to point to any objective data or medical testing to support his diagnosis of coal workers' pneumoconiosis, beyond the "0/1" chest

x-ray reading, that did not constitute evidence of pneumoconiosis. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-174 (4th Cir. 2000); *Akers*, 131 F.3d at 441, 21 BLR at 2-274; Decision and Order at 14; Director's Exhibit 1; Employer's Exhibit 3. The administrative law judge also acted within her discretion in according little weight to Dr. Paranthaman's additional diagnosis of legal pneumoconiosis, because the physician provided no analysis for his conclusion that the miner's chronic bronchitis was related to coal dust exposure. *See Compton*, 211 F.3d at 211, 22 BLR at 2-174; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; Decision and Order at 14; Director's Exhibit 1; Employer's Exhibit 3.

The administrative law judge also permissibly found the March 23, 2005 and June 23, 2005 letters from Dr. Wheatley and Dr. Prince, the miner's treating physicians, to be unreasoned because Dr. Wheatley provided no rationale for his conclusion that the miner had coal workers' pneumoconiosis, and because Dr. Prince indicated that he based his diagnosis of coal workers' pneumoconiosis on the autopsy results, which the administrative law judge had found to be unsupported by microscopic findings, and thus outweighed by Dr. Crouch's better-documented opinion. *See Compton*, 211 F.3d at 211, 22 BLR at 2-175; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-31 (4th Cir. 1997); *Lane v. Union Carbide Corp*., 105 F.3d 166, 172-73, 21 BLR 2-34, 2-45-46 (4th Cir. 1997); Decision and Order at 14; Director's Exhibit 12. In addition, the administrative law judge found, correctly, that neither Dr. Wheatley nor Dr. Prince diagnosed coal workers' pneumoconiosis in their treatment notes. Decision and Order at 14. Regarding the existence of legal pneumoconiosis, the administrative law judge found that while the reports and treatment notes of Drs. Wheatley and Prince also included diagnoses of chronic obstructive pulmonary disease and asthmatic bronchitis, as neither physician clearly indicated that these conditions were due to coal dust exposure, these diagnoses did not constitute diagnoses of legal pneumoconiosis. *See* 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); Decision and Order at 14; Director's Exhibit 12.

Finally, the administrative law judge correctly found that neither the death certificate nor the remaining hospitalization and treatment notes, which included the results of several computerized tomography (CT) scans, contained any diagnoses of pneumoconiosis or of any coal dust related lung disease. Decision and Order at 15; Director's Exhibit 12; Employer's Exhibit 1.

It is the function of the administrative law judge to evaluate the physicians' opinions, *Compton*, 211 F.3d at 211, 22 BLR at 2-175; *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096, 17 BLR 20123, 2-127 (4th Cir. 1993), and the Board will not substitute its inferences for those of the administrative law judge. *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999). Because the administrative law judge properly analyzed the medical opinions and explained her reasons for crediting or discrediting the opinions she reviewed, we affirm her finding that the medical opinion

evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Trumbo*, 17 BLR at 1-88-89 and n.4.

Finally, the administrative law judge weighed together all of the evidence pertinent to the existence of pneumoconiosis, and permissibly concluded that claimant had not established the existence of pneumoconiosis. *Compton*, 211 F.3d at 211, 22 BLR at 2-174; Decision and Order at 15. Therefore, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). As claimant failed to establish the existence pneumoconiosis, a necessary element of entitlement in a survivor's claim under Part 718, a finding of entitlement to benefits is precluded in this case. *See Trent*, 11 BLR at 1-27.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge