

BRB No. 08-0794 BLA

C.B.)	
(Widow of W.B.))	
)	
Claimant-Respondent)	
)	
v.)	
)	
PEABODY COAL COMPANY)	DATE ISSUED: 07/27/2009
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Survivor's Benefits of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Brent Yonts, PSC), Greenville, Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand Awarding Survivor's Benefits (06-BLA-0513) of Administrative Law Judge Daniel F. Sutton 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). This case has been before the Board previously. In his original decision, the administrative law judge found over thirty years of coal mine employment established, that the miner had both clinical and legal pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1), (4), and that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R.

§718.203(b). The administrative law judge further found that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).¹ Accordingly, benefits were awarded. On appeal, the Board affirmed the administrative law judge's findings of both clinical and legal pneumoconiosis and that pneumoconiosis arose out of coal mine employment at Sections 718.202(a)(1), (4) and 718.203(b), but vacated the administrative law judge's finding of death due to pneumoconiosis at Section 718.205(c). *See [C.B.] v. Peabody Coal Co.*, BRB No. 06-0513 BLA (Mar. 27, 2007)(unpub.). The Board, therefore, remanded the case for the administrative law judge to reconsider the evidence on death causation at Section 718.205(c).

On remand, the administrative law judge found that Dr. Pandit's opinion was sufficient to establish that the miner's pneumoconiosis hastened his death² pursuant to the decision of the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises,³ in *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in relying on Dr. Pandit's opinion to find that the miner's pneumoconiosis hastened his death pursuant to Section 718.205(c), and erred in according little weight to the contrary opinions of Drs. Repsher and Caffrey. Claimant responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to file a substantive brief in this appeal.

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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹ The miner died on April 19, 1996. The death certificate, signed by Dr. Parvin Mehta, the miner's treating oncologist, lists as the immediate cause of death: cardiac pulmonary arrest due to lung cancer. Renal failure is listed as an other significant condition contributing to death, but not resulting in the underlying cause. Director's Exhibits 2, 14, 18.

² The administrative law judge found that the other opinions of record were not sufficient to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c).

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner was employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718, claimant must establish that the miner had pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was the cause of the miner's death, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that death was caused by complications of pneumoconiosis, or that the presumption, relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 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); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

In *Williams*, the Sixth Circuit court held that in order to establish that the miner's death was hastened by pneumoconiosis, a doctor's opinion must show that pneumoconiosis hastened death "through a specifically defined process that reduces a miner's life by an estimable time." *Williams*, 338 F.3d at 518, 22 BLR at 2-655. In this case, the administrative law judge credited Dr. Pandit's opinion on death causation because 1) Dr. Pandit asserted that the miner's chronic obstructive pulmonary disease (COPD) and coal worker's pneumoconiosis "exacerbated" the miner's pulmonary condition and, along with lung cancer, significantly contributed to his death from cardiopulmonary arrest, and 2) Dr. Pandit stated that the miner would not have died from cardiopulmonary arrest when he did, *but for* his COPD and coal workers' pneumoconiosis.

On review of Dr. Pandit's opinion, however, we conclude that it fails to meet the hastening standard set forth in *Williams*. Dr. Pandit does not "explain the specifically defined process" by which pneumoconiosis hastened the miner's death, other than asserting that it "exacerbated" his pulmonary condition. *See* Employer's Exhibit 1. Nor does Dr. Pandit's statement that the miner would not have died when he did, *but for* his COPD and coal workers' pneumoconiosis provide an "estimable time," by which pneumoconiosis shortened the miner's life. *Williams*, 338 F.3d at 518, 22 BLR at 2-655. Consequently, the administrative law judge erred, as a matter of law, in finding that Dr. Pandit's opinion was sufficient to establish that the miner's death was hastened by pneumoconiosis at Section 718.205(c). *Williams*, 338 F.3d at 518, 22 BLR at 2-655. Further, because there are no other medical opinions that could support a finding that the miner's pneumoconiosis hastened his death, claimant cannot establish this essential

element of entitlement in her survivor's claim.⁴ *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

Accordingly, the administrative law judge's Decision and Order on Remand Awarding Survivor's Benefits is reversed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

⁴ Because the opinions of Drs. Houser and Pandit are insufficient, as a matter of law, to establish that the miner's death was hastened by pneumoconiosis, we need not address the administrative law judge's findings concerning the opinions of Drs. Repsher and Caffrey, who found that the miner's death was not hastened by pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).