

BRB No. 97-1423 BLA

KATHLEEN HOSKINS	)	
(Surviving Spouse of CLAUDE	)	
HOSKINS)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PHIL YOUNG COAL COMPANY, )	DATE ISSUED:	
INCORPORATED	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE	)	
COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	
UNITED STATES DEPARTMENT OF	)	
LABOR	)	
Party-in-Interest	)	DECISION and ORDER

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

Edmond Collett, Hyden, Kentucky, for claimant.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

Before: , and , Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's surviving spouse, appeals the Decision and Order - Denial of Benefits (96-BLA-0856) of Administrative Law Judge Robert L. Hillyard 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). Claimant filed a survivor's claim in April, 1994.<sup>1</sup> Director's Exhibit 1. The administrative law judge found that claimant had established twenty-three and one-quarter years of coal mine employment. Decision and Order at 4. Considering the case pursuant to 20 C.F.R. Part 718, 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). Further, the administrative law judge found that the evidence was insufficient to establish death due to pneumoconiosis under 20 C.F.R. §718.205(c)(1)-(3). Accordingly, benefits were denied. Claimant appeals, arguing that the administrative law judge erred in evaluating the x-ray evidence, and also erred in rejecting pneumoconiosis as an underlying factor in the miner's death. Employer has filed a response brief supporting affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has submitted a letter stating that he will not respond to claimant's appeal unless specifically requested to do so by the Board.<sup>2</sup>

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<sup>1</sup> The miner filed a claim in October, 1985. This claim was finally denied by the district director on March 13, 1986. Director's Exhibit 41. The miner died on February 24, 1993. Director's Exhibit 10.

<sup>2</sup> We affirm the administrative law judge's decision to credit claimant with twenty-three and one-quarter years of coal mine employment and his findings under 20 C.F.R. §718.202(a)(2)-(4) as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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 the 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).

Section 718.205(c) provides three means by which a claimant may establish death due to pneumoconiosis. Claimant may prove by competent medical evidence that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c)(1). Claimant may prove that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that the death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(c)(2). Claimant may also prove death due to pneumoconiosis where the presumption set forth at 20 C.F.R. §718.304 is applicable. 20 C.F.R. §718.205(c)(3). Because the instant case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, claimant establishes that pneumoconiosis is a substantially contributing cause or factor leading to the miner's death if it serves to hasten that death in any way. *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Corp.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); 20 C.F.R. §718.205(c)(2).

Claimant argues that the administrative law judge substituted his own conclusion for that of a medical expert, *i.e.*, that of the coroner who signed the miner's death certificate. Further, claimant avers that the administrative law judge erred in crediting the opinion of Dr. Dahhan because Dr. Dahhan did not personally conduct a physical examination of the miner upon his death. Claimant's Brief at 5. These arguments are without merit. The administrative law judge properly stated that the death certificate was filled out by the

coroner, who lists the immediate cause of death as cardiorespiratory<sup>3</sup> due to arrest, and secondary causes as cancer of the lungs and “coal miner’s lungs.” Decision and Order at 9; Director’s Exhibit 10. The administrative law judge properly found that he could give the death certificate little weight because there is no indication whether the coroner is a physician, it appears that the coroner is not a physician, and there is no reference as to the basis of the coroner’s conclusions. See Decision and Order at 9; Director’s Exhibit 10; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988).

The administrative law judge properly credited the report of Dr. Dahhan, who found the miner’s death was due to lung cancer, because Dr. Dahhan is an expert, and his report is documented and well reasoned, and consistent with the weight of the objective medical evidence. See Decision and Order at 9; Employer’s Exhibit 1; *Clark, supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985). The administrative law judge did not err in crediting Dr. Dahhan’s opinion because he was not an examining physician. See *Tedesco v. Director, OWCP*, 18 BLR 1-103, 1-105 (1994); *Wetzel, supra* at 1-142. Inasmuch as claimant raises no further arguments regarding death due to pneumoconiosis, we affirm the administrative law judge’s findings that death due to pneumoconiosis was not established pursuant to Section 718.205(c)(1)-(3). See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Inasmuch as we affirm the administrative law judge’s finding that the evidence was insufficient to establish death due to pneumoconiosis, we decline to address the

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<sup>3</sup> The coroner misspelled this word as “cardiorespirotry.” Director’s Exhibit 10.

administrative law judge ' s finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis. See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); 20 C.F.R. §718.202(a)(1).

Accordingly, the administrative law judge ' s Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

Administrative Appeals Judge

Administrative Appeals Judge

Administrative Appeals Judge