

BRB No. 06-0800 BLA

THERESE ADAMS	)	
(Widow of KENNETH J. ADAMS)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED: 06/29/2007
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Daniel L. Leland  
Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg,  
Pennsylvania, for claimant.

Michelle S. Gerdano (Jonathan L. Snare, Acting Solicitor of Labor; Allen  
H. Feldman, 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  
HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order - Denying Benefits (2005-BLA-5738)

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<sup>1</sup> Claimant is the surviving spouse of a miner, who died on November 19, 2002. The death certificate lists the cause of the miner's death as multiple organ damage due to sepsis, pneumonia and acute cholecystitis. Renal failure, anemia and thrombocytopenia are listed as other significant conditions contributing to death. Director's Exhibit 8. Claimant filed a claim for survivor's benefits on March 1, 2004. There is no record of a miner's claim having been filed in this case.

of Administrative Law Judge Daniel L. Leland 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). The administrative law judge found that the miner had a thirty-four year coal mine employment history based on the concession of employer.<sup>2</sup> In considering entitlement, the administrative law judge found the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) because pneumoconiosis did not cause, contribute to, or hasten the miner's death. In addition, the administrative law judge found the evidence insufficient to establish entitlement to the irrebuttable presumption of death due to pneumoconiosis as the evidence was insufficient to establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in failing to find claimant entitled to invocation of the irrebuttable presumption found at Section 718.304, that the miner's death was due to pneumoconiosis. The Director has filed a Motion to Remand, arguing that the administrative law judge considered evidence submitted in excess of the limitations at 20 C.F.R. §725.414 and further erred in failing to make a good cause determination for the admission of excess evidence pursuant to 20 C.F.R. §725.456(b).<sup>3</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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).

Section 725.414(a) places limits on the amount of evidence a party may submit in support of her case. Pursuant to the regulation, claimant may submit no more than two chest x-rays, the results of no more than two pulmonary function studies, the results of no

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<sup>2</sup> Employer, BethEnergy Mines, Incorporated (Bethenergy), was initially a party in this case and filed a Notice of Cross-Appeal. On October 23, 2006, the Director, Office of Workers' Compensation Programs (the Director), moved to dismiss BethEnergy as the responsible operator because the company's surety bond had expired. On January 4, 2007, the Board granted the Director's motion. In a case in which a responsible operator has been dismissed, the district director is entitled to exercise the rights of the responsible operator with regard to the designation and limitations of medical evidence pursuant to 20 C.F.R. §725.414. The caption of the case has been changed to reflect Bethenergy's dismissal and the Director's position as respondent.

<sup>3</sup> We will consider the Director's Motion to Remand as his response brief.

more than two blood gas studies, no more than one report of an autopsy, no more than one report of each biopsy, and no more than two medical reports in support of the claim. Further, any chest x-ray interpretation, pulmonary function test results, blood gas studies, autopsy report, biopsy report, and physicians' opinions that appear in a medical report must each be admissible. 20 C.F.R. §725.414(a)(2)(i). Parties opposing entitlement are subject to the same limitations. 20 C.F.R. 725.414(a)(3)(i). Medical evidence in excess of these limitations shall not be admitted into the hearing record in the absence of good cause. 20 C.F.R. §725.456(b)(1). The validity of the regulation has been upheld by the Board. See *Ward v. Consolidation Coal Co.*, 23 BLR 1-151 (2006); *Smith v. Martin County Coal Co.*, 23 BLR 1-69, 1-74 (2004); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-58-59 (2004)(*en banc*).

In the instant case, the administrative law judge recognized the limitations on evidence found at Section 725.414, and applied the regulation to limit the number of x-ray interpretations submitted by employer. Decision and Order at 2. As the Director notes, however, the administrative law judge failed to apply the limitation to the other evidence submitted by the parties. Director's Brief at 24. Instead, the administrative law judge admitted all of the medical opinion evidence submitted by the parties in determining that claimant had failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). As the administrative law judge failed to limit the number of medical opinions submitted by claimant and employer pursuant to Section 725.414 and neither the parties, nor the administrative law judge, addressed whether good cause existed for exceeding the limit placed on allowable evidence, we vacate the administrative law judge's decision denying benefits.

This case is, accordingly, remanded to the administrative law judge for consideration of evidence allowable under the evidentiary limitations found at Section 725.414. On remand, the administrative law judge must instruct the parties to designate the medical evidence submitted by them in support of their case pursuant to the limits at Section 725.414. If excessive evidence is proffered, the administrative law judge must determine whether, pursuant to Section 725.456(b)(1), good cause exists for the admission of that evidence. In view of this determination, we will not address claimant's specific allegations of error regarding the administrative law judge's consideration of the evidence. On remand, after making his determination regarding the admission of evidence, the administrative law judge must determine whether claimant is entitled to survivor's benefits.

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is vacated and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge