

BRB No. 99-0675 BLA

ADELE MELISAUSKAS)
(Widow of STANLEY MELISAUSKAS))
)
 Claimant-Petitioner)

v.)

DATE ISSUED: _____

)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
 Respondent)

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan,
Administrative Law Judge, United States Department of Labor.

Adele Melisauskas, Dalton, Pennsylvania, *pro se*.

Jennifer U. Toth (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate
Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and
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: HALL, Chief Administrative Appeals Judge, SMITH, Administrative
Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant,¹ representing herself, appeals the Decision and Order Denying Benefits (97-BLA-1465) of Administrative Law Judge Robert D. Kaplan 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). Claimant filed the instant survivor's claim on August 2, 1996,² which the administrative law judge properly considered under 20 C.F.R. Part 718.

¹Claimant is the surviving spouse of the deceased miner, who died on July 21, 1996. Director's Exhibit 6. On the miner's death certificate, Dr. Kazmierski attributed the miner's death to three immediate causes: respiratory failure, pulmonary hypertension and valvular heart disease. *Id.*

²The miner filed a claim for benefits on August 17, 1979. Director's Exhibit 19. The living miner's claim was administratively denied on December 17, 1980. *Id.* The miner took no further action thereafter in pursuit of benefits.

After crediting the miner with five years of coal mine employment, the administrative law judge found that claimant failed to establish that the miner had pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge thus denied benefits. On appeal, claimant challenges the administrative law judge's denial of benefits, generally contending that the administrative law judge erred in failing to conclude that the miner suffered from coal workers' pneumoconiosis and that pneumoconiosis hastened the miner's death, given the medical opinions of Drs. Aquilina, Jacobs, Lenahan and Kazmierski. The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's decision denying benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We 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).

Benefits are payable on a survivor's claim filed on or after January 1, 1982 only where the miner's death was due to pneumoconiosis, where pneumoconiosis was a substantially contributing cause of death, where death was caused by complications of pneumoconiosis or where complicated pneumoconiosis is established. See 20 C.F.R. §§718.1, 718.205(c)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The United States Court of Appeals for the Third Circuit, within whose jurisdiction the instant case arises, has held that, for purposes of Section 718.205(c)(2), pneumoconiosis is considered a substantially contributing cause of the miner's death "where pneumoconiosis actually hastens death." *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989).

In considering claimant's entitlement to survivor's benefits in this case, the administrative law judge first correctly noted that he must make a threshold determination as to whether claimant established that the miner suffered from pneumoconiosis pursuant to Section 718.202(a)(1)-(4). See *Trumbo, supra*; Decision and Order at 4. Addressing the x-ray evidence under Section 718.202(a)(1), the administrative law judge correctly found that an x-ray taken on November 20, 1980 was interpreted as negative by Dr. Biancarelli, and was found to be unreadable by Dr. Dessen. Decision and Order at 5; Director's Exhibit 19. The administrative law judge further correctly stated that none of the thirteen chest x-rays taken during the miner's hospitalization beginning on July 3, 1996 indicated that the miner suffered from pneumoconiosis, and that two of these x-rays – *i.e.*, the July 19, 1996 and July 17, 1996 films – were re-read as negative for pneumoconiosis by Dr. Barrett, a Board-certified radiologist and B reader. Decision and Order at 5; Director's Exhibit 8. The administrative law judge also properly found that while Dr. Aquilina stated in his 1986 narrative examination report that Dr. Gill read an x-ray dated March 21, 1986 as positive for pneumoconiosis, the record does not contain an x-ray report from Dr. Gill himself or any

other physician with regard to a March 21, 1986 x-ray.³ The record does not contain any other x-ray evidence. Decision and Order at 5; Director's Exhibit 7. Thus, inasmuch as the administrative law judge properly found that the record did not contain any x-ray evidence that the miner suffered from pneumoconiosis, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).

Additionally, the administrative law judge properly found that claimant did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2), as there is no autopsy or biopsy evidence in the record. Decision and Order at 5. The administrative law judge also properly found that claimant was precluded from establishing the existence of pneumoconiosis under Section 718.202(a)(3), as none of the presumptions thereunder applies.⁴ *Id.* We, therefore, affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2), (a)(3).

³Dr. Aquilina does not indicate in his June 4, 1986 report that he himself interpreted a March 21, 1986 x-ray, but merely refers to an interpretation of a March 21, 1986 film by Dr. Gill. Director's Exhibit 7.

⁴The record does not contain any evidence of complicated pneumoconiosis, and, consequently, claimant does not qualify for the presumption under 20 C.F.R. §718.304. The administrative law judge further properly determined that the presumptions at 20 C.F.R. §§718.305 and 718.306 were inapplicable in this case since the instant claim was filed after January 1, 1982, and since the miner died after March 1, 1978. See 20 C.F.R. §§718.305, 718.306; Decision and Order at 5.

In finding the medical opinion evidence insufficient to establish that the miner suffered from pneumoconiosis pursuant to Section 718.202(a)(4), the administrative law judge first discounted Dr. Aquilina's report dated June 4, 1986, in which the doctor stated that the miner had pneumoconiosis. Decision and Order at 6; Director's Exhibit 7. In her letter accompanying her appeal, claimant contends that the administrative law judge improperly rejected Dr. Aquilina's opinion on the basis that the doctor relied upon an coal mine employment history in excess of ten years, rather than a five year history credited by the administrative law judge, a factor which claimant contends should not have made Dr. Aquilina's opinion less believable. Contrary to claimant's contention, however, the administrative law judge properly discounted Dr. Aquilina's on that basis, finding that because the doctor relied upon an inflated coal mine employment history of over ten years, his opinion was not well documented.⁵ See *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); Decision and Order at 6; Director's Exhibit 7. Furthermore, the administrative law judge properly found that Dr. Aquilina's opinion was not well documented because Dr. Aquilina based his diagnosis of pneumoconiosis partly on a positive x-ray interpretation from Dr. Gill which, as discussed *supra*, is not contained in the record, but only referred to by Dr. Aquilina in his June 4, 1986 report. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); Decision and Order at 6; Director's Exhibit 7.

Claimant also generally contends that the administrative law judge should have awarded benefits in light of the reports of Drs. Jacobs, Lenahan and Kazmierski. In a May 31, 1995 report, Dr. Jacobs, who was the miner's attending physician during his hospitalization in May 1995, diagnosed "severe acute respiratory failure probably secondary to biventricular heart failure and pulmonary hypertension." Director's Exhibit 15. Dr. Jacobs further indicated that he "suspect[ed] some underlying lung disease secondary to a history of dairy farming, coal mining, and remote smoking history." *Id.* The administrative law judge properly discounted Dr. Jacobs's opinion as too equivocal to constitute a reasoned medical opinion, see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988), and further properly found that the opinion was not well reasoned because Dr. Jacobs did not explain the basis for his statement that he suspected some underlying lung disease secondary to a history of dairy farming, coal mining, and remote smoking history or distinguish the three possible etiologies for the lung disease by stating how much each

⁵The administrative law judge properly credited the miner with only five years of coal mine employment in light of the miner's Social Security Earnings records, which indicate that the miner had fourteen quarters, or three and one-half years of coal mine employment, in which the miner earned in excess of \$50.00, and in light of claimant's hearing testimony and that of an affiant, Joseph Pilinko, which established that the miner worked another one and one-half years in coal mine employment for employers who did not pay into Social Security. See *Nicoli v. Director, OWCP*, 6 BLR 1-910 (1984); *Mullins v. Director, OWCP*, 6 BLR 1-508 (1983); Decision and Order at 3-4; Director's Exhibit 3; Claimant's Exhibit 1; Hearing Tr. at 9 *et seq.*

contributed to the condition. *See Clark, supra; Tackett, supra*; Decision and Order at 7; Director's Exhibit 15. With regard to the reports of Drs. Lenahan and Kazmierski, the administrative law judge correctly found that while both physicians noted that the miner had a history of chronic obstructive pulmonary disease and respiratory failure, neither physician indicated that these conditions were related in any way to coal dust exposure or diagnosed pneumoconiosis. Decision and Order at 7; Director's Exhibits 6, 8. Finally, the administrative law judge properly found that Dr. Spagnolo opined that the miner did not have pneumoconiosis based upon his review of the medical evidence of record. Decision and Order at 7; Director's Exhibits 9, 16. Consequently, we affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish that the miner suffered from pneumoconiosis pursuant to Section 718.202(a)(4).

Inasmuch as the administrative law judge properly found that claimant failed to establish that the miner suffered from pneumoconiosis pursuant to Section 718.202(a)(1)-(4), the administrative law judge properly found that claimant is not entitled to an award of survivor's benefits. *See Trumbo, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge