

BRB No. 07-0538 BLA

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| P.S.                          | ) |                         |
| (Widow of L.S.)               | ) |                         |
|                               | ) |                         |
| Claimant-Petitioner           | ) |                         |
|                               | ) |                         |
| v.                            | ) |                         |
|                               | ) |                         |
| ROCK GAP COAL COMPANY         | ) | DATE ISSUED: 03/14/2008 |
|                               | ) |                         |
| and                           | ) |                         |
|                               | ) |                         |
| AMERICAN RESOURCES 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 of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Johanna F. Ellison (Ferreri & Fogle, P.L.L.C.), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order (2005-BLA-05980) of Administrative Law Judge Ralph A. Romano denying benefits 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 miner died on June 8, 2002, and claimant filed her application for survivor's benefits on June 21, 2004. Director's Exhibits 2, 10. In a decision dated February 15, 2007, the administrative law judge credited the miner with twenty-two years of coal mine employment based on the parties' stipulation. The administrative law judge additionally found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and, therefore, insufficient to 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 challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a), 718.205(c), arguing that the administrative law judge failed to give proper credit to Dr. Mandviwala's treatment records. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.

The Board 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.<sup>2</sup> 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).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), 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 survivor's 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

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<sup>1</sup> Claimant is the widow of the miner, who died on June 8, 2002. Director's Exhibit 10.

<sup>2</sup> The law of the United States Court of Appeals for the Sixth Circuit is applicable as the miner was employed in the coal mining industry in Kentucky. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

C.F.R. §718.205(c)(5); *Mills v. Director, OWCP*, 348 F.3d 133, 23 BLR 2-12 (6th Cir. 2003); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993). 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, 1-27 (1987).

Claimant contends that the administrative law judge erred in finding that the diagnoses of COPD and pulmonary fibrosis by the miner's treating physician, Dr. Mandviwala, when considered in conjunction with the miner's death certificate, were insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Claimant's Brief at 5-6. Contrary to claimant's arguments, however, we can discern no error in the administrative law judge's consideration of this evidence. The administrative law judge correctly determined that although Dr. Mandviwala's treatment records and the miner's death certificate indicated that the miner died primarily due to congestive heart failure and secondarily due to lung disease, neither attributed the miner's lung disease to dust exposure from coal mine employment, *see* 20 C.F.R. §718.201(a), and Dr. Broudy affirmatively opined that the miner's death was unrelated to pneumoconiosis. Decision and Order at 9-10; Director's Exhibits 10, 12, 18. As the administrative law judge properly considered Dr. Mandviwala's treatment records and the miner's death certificate, we reject claimant's allegation of error, and affirm the administrative law judge's conclusion that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), as supported by substantial evidence. *See Mills*, 348 F.3d at 136, 23 BLR at 2-17. Consequently, we affirm the administrative law judge's denial of survivor's benefits, and need not reach claimant's arguments regarding the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(4). *Trumbo*, 17 BLR at 1-87-88; *see Trent*, 11 BLR at 1-27.

Accordingly, we affirm the administrative law judge's Decision and Order denying benefits.

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