

BRB No. 07-0576 BLA

A.H. )  
(Widow of E.H.) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 )  
SHAMROCK COAL COMPANY, ) DATE ISSUED: 03/14/2008  
INCORPORATED, )  
 )  
and )  
 )  
SUN COAL COMPANY, INCORPORATED )  
 )  
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 – Denying Benefits of Joseph E. Kane,  
Administrative Law Judge, United States Department of Labor.

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

Ronald E. Gilbertson (Bell, Boyd & Lloyd LLP), Washington, D.C., for  
employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (2005-BLA-05520)  
of Administrative Law Judge Joseph E. Kane (the administrative law judge), rendered 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 record supported the parties' stipulation to thirty-six years of qualifying coal mine employment, Decision and Order at 3, but that claimant failed to prove that the miner's death was due to pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a)(1)-(4), 718.203(b), 718.205(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that pneumoconiosis was not established at 20 C.F.R. §718.202(a)(1), (4) by x-ray and medical opinion evidence. Claimant also argues that the administrative law judge erred in finding that pneumoconiosis did not contribute to the miner's death at 20 C.F.R. §718.205(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

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.<sup>1</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).

In order to establish entitlement to survivor's benefits, 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. §§718.202(a), 718.203(a), 718.205(a); *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). In a survivor's claim filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, if pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, if the miner's death was caused by complications of pneumoconiosis, or if the presumption at 20 C.F.R. §718.304 is available, based on a finding of complicated pneumoconiosis. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a "substantially contributing cause" of death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

After consideration of the arguments on appeal, the administrative law judge's Decision and Order, and the evidence of record, we conclude that the administrative law judge's Decision and Order is rational, supported by substantial evidence, and consistent

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<sup>1</sup> The law of the United States Court of Appeals for the Sixth Circuit applies because the miner was employed in coal mining in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202(1989)(*en banc*); Director's Exhibit 2.

with applicable law. It must, therefore, be affirmed. In addressing death due to pneumoconiosis at Section 718.205(c), the administrative law judge found that the evidence of record did not establish “that the miner died due to pneumoconiosis or any other disease related to his coal mine employment.” Decision and Order at 9. The administrative law judge noted that the miner’s death certificate and the medical opinions of record supported a finding that the miner’s death was due to colon cancer and heart disease.<sup>2</sup> Decision and Order at 9. The administrative law judge rejected claimant’s contention that Dr. Simpao’s finding that the miner had a moderate pulmonary impairment related to coal mine employment, provided a reasonable basis on which to find that pneumoconiosis contributed, at least in part, to the miner’s death. The administrative law judge found that claimant provided no evidence in the record to support his contention.<sup>3</sup> Decision and Order at 9; *see generally Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The administrative law judge, therefore, found that the evidence of record failed to carry claimant’s burden at Section 718.205(c), and could not establish entitlement to benefits in this case. Because death due to pneumoconiosis, an essential element of entitlement, was not established, we need not consider claimant’s argument on the issue of pneumoconiosis at Section 718.202(a).

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<sup>2</sup> The miner’s death certificate listed acute myocardial infarction and coronary artery disease as the causes of death. Director’s Exhibit 6. Drs. Fino and Tuteur, who reviewed the medical evidence of record and provided detailed summaries and analyses of the evidence, found that the miner had a long history of cardiac-related health issues, and attributed the miner’s death to coronary artery disease, heart disease, heart attack, and associated effects of his treatment for colon cancer. Employer’s Exhibits 1, 2.

<sup>3</sup> The administrative law judge found that the record’s voluminous treatment and hospitalization records contained only a few notations of chronic obstructive pulmonary disease, which were not attributed to coal dust exposure.

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

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