

BRB No. 07-0592 BLA

C.E.)
(Widow of E.E.))
)
Claimant-Petitioner)
)
v.)
)
RANGER FUEL CORPORATION) DATE ISSUED: 03/31/2008
)
Employer-Respondent)
)
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 Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Juliet W. Rundle & Associates), Pineville, West Virginia, for claimant.

Kathy L. Snyder and Wendy Glover Adkins (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (2006-BLA-5454) of Administrative Law Judge Paul H. Teitler rendered 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). This case involves a survivor’s claim filed on February 4, 2005.¹ After crediting the miner with 11.5 years of coal mine employment,²

¹ The administrative law judge’s denial of the miner’s claim was affirmed by the Board. [*E.E.*] *v. Ranger Fuel Corp.*, BRB No. 94-2851 BLA (May 25, 1995) (unpub.).

the administrative law judge found that the autopsy and medical opinion evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge further found that claimant was entitled to the presumption that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(a). However, the administrative law judge found that the evidence did not 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 contends that the administrative law judge erred in finding that the evidence does not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has indicated that he will not submit a response unless requested to do so by the Board.

The Board must affirm the findings of fact and conclusions of law 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).

Because this survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).³ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director*,

² The record indicates that the miner's coal mine employment occurred in West Virginia. Director's Exhibits 3, 4. Accordingly, the law of the United States Court of Appeals for the Fourth Circuit is applicable. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

³ Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at 718.304 is applicable.

OWCP, 11 BLR 1-85 (1988). When pneumoconiosis is not the cause of the miner's death, a miner's death will be considered to be due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

Claimant contends that the administrative law judge erred in failing to find that Dr. Bhavsar's opinion, along with other medical evidence, establishes that the miner's death was due to pneumoconiosis. Dr. Bhavsar, the miner's treating physician, opined that the miner suffered from pneumoconiosis, chronic obstructive pulmonary disease, emphysema, and chronic bronchitis, and that he was totally disabled by his respiratory conditions. Director's Exhibit 10. The death certificate, signed by Dr. Kurunathapillai, lists the cause of death as respiratory failure due to exacerbation of chronic obstructive pulmonary disease. Director's Exhibit 8. The autopsy report prepared by the autopsy prosector, Dr. Jelic, states that the miner had simple coal worker's pneumoconiosis, chronic bronchitis, and bullous and moderate emphysema. Director's Exhibit 9.

We reject claimant's contention of error. This evidence is legally insufficient to establish that the miner's death was due to pneumoconiosis, either standing alone or in its totality. Neither Dr. Bhavsar nor Dr. Jelic offers an opinion as to the cause of the miner's death or as to any conditions that may have contributed to his death. *United States Steel Mining Co. v. Director, OWCP*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999). The death certificate also is legally insufficient to establish that the miner's death was due to pneumoconiosis. *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000). Moreover, the administrative law judge rationally credited the opinions of Drs. Oesterling, Bush, Castle and Crouch that the miner's death was not due to or hastened by pneumoconiosis, finding them to be well-reasoned and supported by their

(4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.

(5) Pneumoconiosis is a "substantially contributing cause" of the miner's death if it hastens the miner's death.

20 C.F.R. §718.205(c).

underlying documentation.⁴ Decision and Order at 10; *see generally Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). Therefore, as it is rational, supported by substantial evidence, and in accordance with law, we affirm the administrative law judge's finding that claimant did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) and the consequent denial of benefits. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

⁴ Dr. Oesterling opined that while there was evidence of mid-macular coal workers' pneumoconiosis, the miner's death was due to asthmatic bronchitis and resultant severe panlobular emphysema, a process unrelated to coal mine dust exposure. Director's Exhibit 13. Dr. Bush found that the lungs showed a mild degree of simple coal workers' pneumoconiosis, but that it did not play any role in the miner's death. Employer's Exhibit 1. Dr. Castle found that the miner's minimal simple coal workers' pneumoconiosis did not contribute to his death. Employer's Exhibit 2. Dr. Crouch concluded that coal dust found in the miner's lungs was too mild to have caused any clinically significant degree of respiratory impairment or disability and could not have caused, contributed to or hastened the miner's death. Employer's Exhibit 6.