

BRB No. 99-0880 BLA

WILMA SNYDER)
(Widow of ORA SNYDER))
)
 Claimant-Petitioner)

v.)

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

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Rita S. Fuchsman, Chillicothe, Ohio, for claimant.

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:

Claimant¹ appeals the Decision and Order - Denying Benefits (98-BLA-0647) of

¹ Claimant, Wilma Snyder, filed a survivor's claim for benefits on June 16, 1997. Director's Exhibit 1. Mrs. Snyder is the widow of Ora Snyder, the miner, who died on November 16, 1996. Director's Exhibit 2. The miner filed his first application with the Social Security Administration for benefits on September 25, 1970, which was finally denied on May 8, 1979. Director's Exhibit 11. Subsequently, the miner filed a duplicate claim on March 21, 1984, which was denied on August 17, 1984. Director's Exhibit 12. The miner did not pursue this claim. On July 21, 1986, the miner filed a third application for benefits, which was, likewise, denied on January 7, 1987. Director's Exhibit 13.

Administrative Law Judge Joseph E. Kane 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). Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge credited the miner with ten and one-half years of qualifying coal mine employment and noted his agreement with the concession of the Director, Office of Workers' Compensation Programs (the Director) that the existence of pneumoconiosis was established. The administrative law judge then found that, although the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erroneously failed to find that the miner's death was due to pneumoconiosis under Section 718.205(c). The Director responds, urging affirmance of the denial of benefits.²

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the applicable law, they are binding upon this Board and may not be disturbed. 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 benefits on a survivor's claim filed on or after January 1, 1982, a claimant must establish that the miner had pneumoconiosis, that the miner's 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). Death will be considered due to pneumoconiosis if the evidence establishes that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2), (4). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it actually hastens the miner's death. *See Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th

² We affirm the administrative law judge's determinations regarding length of coal mine employment and pursuant to 20 C.F.R. §718.203(b) inasmuch as these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 3-5, 7-8.

Cir. 1993).

With respect to Section 718.205(c)(2), claimant argues that the administrative law judge erred by failing to credit Dr. Dutta's opinion that the miner's chronic obstructive pulmonary disease contributed significantly to his death. Specifically, claimant argues that because Dr. Dutta opined that the miner's chronic obstructive pulmonary disease (COPD) "might have occurred [sic] from working in the mines," and provided no other possible etiology for the miner's COPD, the administrative law judge erroneously found that the evidence of record did not establish the causal nexus between pneumoconiosis and the miner's demise.³ Claimant's argument lacks merit. Noting Dr. Dutta's diagnosis of chronic obstructive pulmonary disease, the administrative law judge properly acknowledged that a diagnosis of chronic obstructive pulmonary disease falls within the regulatory definition of pneumoconiosis if the chronic obstructive pulmonary disease is significantly related to or aggravated by coal mine employment. *See* 20 C.F.R. §718.201; *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 175, 19 BLR 2-265, 2-269 (4th Cir. 1995). Nevertheless, the administrative law judge, within a proper exercise of discretion, found that Dr. Dutta's opinion was equivocal as to the etiology of the miner's chronic obstructive pulmonary disease, and therefore, that this physician's opinion was insufficient to establish that legal pneumoconiosis caused or hastened the miner's death. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); Decision and Order at 9; Director's Exhibit 3. Inasmuch as the administrative law judge reasonably discredited Dr. Dutta's opinion because it was equivocal, we reject claimant's argument. *See Griffith, supra; Justice, supra; Campbell, supra*. Inasmuch as claimant has not raised any other allegation of error with respect to the administrative law judge's analysis of the medical evidence under

³ In a letter dated September 8, 1997, Dr. Dutta noted that he had been the miner's treating physician since 1987 and "[o]n reviewing his records, ...didn't find any records indicating a diagnosis of Black Lung" and "... don't have any evidence that he was ever seen by a Black Lung specialist." Director's Exhibit 6. Dr. Dutta also opined that the miner had chronic obstructive pulmonary disease "which might have occurred [sic] from working in the mines. His terminal events included aspiration Pneumonia and obviously the COPD contributed significantly to the terminal events." *Ibid*.

Section 718.205(c), we affirm the administrative law judge's determination that claimant failed to satisfy her burden of establishing that pneumoconiosis substantially contributed to or hastened the miner's death. *See Brown, supra; Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge