

BRB No. 98-1278 BLA

FLORENCE MEADE	)	
(Widow of HOWARD MEADE)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Barry H. Joyner (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, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order - Denying Benefits (97-BLA-1147) of Administrative Law Judge Rudolf L. Jansen 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 administrative law judge found that the evidence established the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a),

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<sup>1</sup> Claimant is Florence Meade, the surviving widow of the miner, Howard Meade, who died on September 28, 1993. Director's Exhibit 4. Claimant filed her survivor's claim with the Department of Labor on January 25, 1994. Director's Exhibit 1.

718.203, but found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), and therefore, denied benefits.

On appeal, claimant challenges the administrative law judge's determination that the evidence fails to establish death due to pneumoconiosis at Section 718.205(c). Claimant argues that the death certificate signed by Dr. Moneyhun, claimant's treating physician, along with Dr. Moneyhun's supplemental letters, are sufficient to establish death due to pneumoconiosis pursuant to the standard set forth in *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 816, 17 BLR 2-135 (6th Cir. 1993). The Director, Office of Workers' Compensation Programs (the Director), in response, asserts that the administrative law judge's findings that the evidence fails to establish that the miner's death was due to pneumoconiosis is supported by substantial evidence, and accordingly, urges affirmance of the administrative law judge's Decision and Order.<sup>2</sup>

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 applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant challenges the administrative law judge's finding that the evidence is insufficient to establish death due to pneumoconiosis at Section 718.205(c). Claimant asserts that the miner's death certificate which was signed by Dr. Moneyhun, and which states that the cause of death was "pneumonia due to chronic obstructive pulmonary disease and coronary artery disease", Director's Exhibit 4, along with supplemental letters by Dr.

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<sup>2</sup> Inasmuch as no party challenges the administrative law judge's findings that claimant established seven years of qualifying coal mine employment, that employer is the putative responsible operator, that the evidence establishes the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a), 718.203, and that the evidence fails to establish complicated pneumoconiosis at Section 718.304, these findings are affirmed. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Coal Co.*, 6 BLR 1-710 (1983).

Moneyhun where he stated that the chronic obstructive pulmonary disease “could be related” to the miner’s coal mine employment are sufficient to establish that the miner’s death was due to pneumoconiosis. We disagree.

The administrative law judge correctly found that the miner’s death certificate listed pneumonia as the cause of death with chronic obstructive pulmonary disease and coronary artery disease as other significant conditions contributing to death. Decision and Order at 10-11. He recognized further that in a supplemental letter, dated August 17, 1994, Dr. Moneyhun stated that the miner’s chronic obstructive pulmonary disease “could be related to his coal mine employment.” Director’s Exhibit 12; Decision and Order at 11. The administrative law judge, however, permissibly found that Dr. Moneyhun’s statement, that chronic obstructive pulmonary disease “could be related to coal mine employment,” was equivocal and thus, insufficient to establish death due to pneumoconiosis. *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 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Snorton v. Ziegler Coal Co.*, 9 BLR 1-106 (1986); Decision and Order at 11.<sup>3</sup> In addition, the administrative law judge permissibly gave little weight to Dr. Moneyhun’s opinion because it failed to discuss the miner’s smoking history and was not supported by the other evidence of record. *See Clark v. Karst- Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Addison v Director, OWCP*, 11 BLR 1-68 (1988). Further, claimant’s reliance upon *Brown, supra*, for his contention that a treating physician, such as Dr. Moneyhun, is entitled to dispositive weight is misplaced, inasmuch as the administrative law judge rationally found that Dr. Moneyhun’s opinion was not credible. *Griffith, supra*. We affirm, therefore, the administrative law judge’s finding that the evidence of record was insufficient to establish that the miner’s death was due to pneumoconiosis pursuant to Section 718.205(c), *see Griffith, supra; Brown, supra; Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v Director, OWCP*, 11 BLR 1-85 (1988), and, thereby, the administrative law judge’s denial of benefits on the survivor’s claim.

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<sup>3</sup> We reject claimant’s contention that the language used by Dr. Moneyhun would be sufficient to establish causation under *Youghioghney & Ohio Coal Co. v. Webb*, 49 F.3d 244, 19 BLR 2-123 (6th Cir. 1995), for the reasons given by the Director in his brief at footnote 6.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge