

BRB No. 06-0463 BLA

GLEND A G. NEWMAN)
(Widow of ROBERT N. NEWMAN))
)
 Claimant-Petitioner)
)
 v.)
)
 PEABODY COAL COMPANY) DATE ISSUED: 11/20/2006
)
 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 – Denying Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle and Rundle, L.C.), Pineville, West Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order -Denying Benefits (2004-BLA-6686) of Administrative Law Judge Daniel L. Leland on a survivor's claim filed pursuant to the

¹ Claimant is the widow of a miner who died on November 25, 2002. The death certificate lists the immediate cause of the miner's death as acute thrombosis of the coronary artery due to "A.S.C.V.D." Director's Exhibit 12. COPD and cor pulmonale are also listed as significant contributing causes. *Id.* There is no evidence in the record of a separate miner's claim having been filed.

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). Based on a stipulation of the parties, the administrative law judge credited the miner with twenty-one years and seven months of coal mine employment, Decision and Order at 3; Hearing Transcript at 5, and adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718 based on claimant's March 25, 2003 filing date. Director's Exhibit 2. Addressing the merits of entitlement, the administrative law judge found the medical evidence sufficient to establish the existence of simple pneumoconiosis. Decision and Order at 4. However, the administrative law judge found the medical evidence of record insufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304 or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Decision and Order at 4-6. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish entitlement to benefits. Claimant contends that the administrative law judge erred in finding the opinion of the autopsy prosector, Dr. Mahmoud, that the miner's death was due to pneumoconiosis, outweighed by contrary medical opinions. In response, employer urges affirmance of the administrative law judge's denial of benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.²

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. 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 miner's pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). In a survivor's claim filed on or after January 1, 1982, the miner's death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's

² The parties do not challenge the administrative law judge's decision to credit the miner with twenty-one years and seven months of coal mine employment, and his finding that the evidence established the existence of simple pneumoconiosis. In addition, no challenge has been made to the determination that the evidence does not establish the presence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. These findings are therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

death, if it was a substantially contributing cause or factor leading to the miner's death, if death was caused by complications of pneumoconiosis, or if the presumption, relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304 is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that it contains no reversible error. The administrative law judge considered all of the relevant evidence and rationally found that the medical evidence was insufficient to establish that the miner was suffering from complicated pneumoconiosis pursuant to Section 718.304 or that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *see also Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Further, contrary to claimant's contentions, the administrative law judge reasonably exercised his discretion, as trier-of-fact, in finding that the medical opinion of Dr. Mahmoud, the autopsy prosector, was entitled to little weight as the physician did not offer an explanation as to why he did not initially diagnose the existence of pneumoconiosis, and did not state the manner in which the disease contributed to the miner's death. Specifically, the administrative law judge found that Dr. Mahmoud did not list coal workers' pneumoconiosis in either the death certificate or the autopsy report and although the physician listed COPD and cor pulmonale, he did not relate these conditions to the miner's death or coal mine employment. Decision and Order at 5; Director's Exhibits 13, 15. The administrative law judge found that it was not until five months after the miner's death, that Dr. Mahmoud submitted a letter stating that the miner suffered from pneumoconiosis which contributed to death. Decision and Order at 5; Director's Exhibit 16; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Akers*, 131 F.3d 438, 21 BLR 2-269; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). In addition, the administrative law judge reasonably found the medical reports of Drs. Caffrey, Tuteur and Zaldivar, all of whom opined that pneumoconiosis played no role in the miner's death, Employer's Exhibits 1-3, 6-8, entitled to more weight than the report of Dr. Mahmoud, based on the former physicians' superior credentials.³ Decision and Order at 5; *see Hicks*, 138 F.3d

³ The administrative law judge noted that Dr. Caffrey was board certified in pathology and that Drs. Tuteur and Zaldivar were board-certified in internal medicine and

524, 21 BLR 2-323; *Akers*, 131 F.3d 438, 21 BLR 2-269; *Urgolites v. BethEnergy Mines, Inc.*, 17 BLR 1-20 (1992). We, therefore, affirm the administrative law judge's determination that the miner's death was not caused or hastened by his pneumoconiosis, 20 C.F.R. §718.205(c)(5); *Sparks*, 213 F.3d 186, 22 BLR 2-251; *Shuff*, 967 F.2d 977, 16 BLR 2-90.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

pulmonary disease. The administrative law judge further noted that while Dr. Mahmoud was identified as the Deputy Chief Medical Examiner of the State of West Virginia, his specific qualifications as a pathologist were not in the record. Decision and Order at 5.