

BRB No. 08-0179 BLA

O.D.)
(Widow of H.D.))
)
Claimant-Petitioner)
)
v.)
) DATE ISSUED: 11/20/2008
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Alice M. Craft,
Administrative Law Judge, United States Department of Labor.

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

Emily Goldberg-Kraft (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Benefits (05-BLA-5757) of Administrative Law Judge Alice M. Craft 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 credited the

¹ Claimant is the widow of the miner, who died on June 2, 2003. Claimant's Exhibit 2. The administrative law judge noted that the miner filed an application for benefits on July 24, 2002, that was finally denied on January 16, 2007. Decision and Order at 2.

miner with at least ten years of coal mine employment² and found that the stipulation of the Director, Office of Workers' Compensation Programs (the Director), to the existence of pneumoconiosis, was supported by the evidence. However, the administrative law judge found that the evidence did not establish that pneumoconiosis caused or hastened the miner's death. Accordingly, she denied benefits.

On appeal, claimant asserts that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis. The Director responds, urging affirmance of the administrative law judge's denial of benefits.³

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner's death, or was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. Death will also be considered due to pneumoconiosis if the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable.⁴ 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20

² The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as the miner was last employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

³ We affirm the administrative law judge's length of coal mine employment finding and her finding that the existence of pneumoconiosis was established, as these findings are not challenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

⁴ The administrative law judge accurately noted that the record contains no evidence that the miner had complicated pneumoconiosis.

C.F.R. §718.205(c)(5); *Mills v. Director, OWCP*, 348 F.3d 133, 23 BLR 2-12 (6th Cir. 2003).

As noted by the administrative law judge, the evidence addressing the cause of the miner's death was a death certificate and Dr. Rasmussen's report. The death certificate was signed by Philip Bianchi, identified as the Harlan County Coroner, who listed "Complications of Chronic Obstructive Lung Disease" as the immediate cause of the miner's death. Claimant's Exhibit 2. Dr. Rasmussen reviewed the miner's medical evidence and stated that he was unable to "conclude that [the miner's] death was significantly contributed (sic) or hastened by pneumoconiosis." Director's Exhibit 18.

The administrative law judge noted that Dr. Rasmussen's opinion was uncontradicted and she found it to be well reasoned and well documented, and she accorded it great weight. She also found that the record did not contain any evidence that pneumoconiosis caused or contributed to the miner's death. In addition, she found that the notation on the death certificate, without additional explanation, could not be the basis for an award of benefits. Decision and Order at 6-7.

Claimant contends that the miner's death certificate was well reasoned and the administrative law judge erred in failing to credit it. Contrary to claimant's contention, the administrative law judge properly found that the death certificate, in and of itself, was insufficient to support a finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), because a "notation on a death certificate without additional explanation" does not constitute a reasoned medical opinion. Decision and Order at 7; *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000). Moreover, the death certificate cannot support claimant's burden of establishing that the miner's death was due to pneumoconiosis, as it did not indicate that the miner's death was connected to pneumoconiosis or any condition arising out of coal mine employment. See 20 C.F.R. §718.201(a).

Further, claimant's assertion that the administrative law judge "may have selectively analyzed" the evidence is unfounded. Claimant's Brief at 3. Claimant has identified no instances in support of this assertion, nor does a review of the evidence and the administrative law judge's Decision and Order reveal a selective analysis of the evidence. See *White v. New White Coal Co.*, 23 BLR 1-1, 1-5 (2004). Therefore, we reject this assertion.

Because the administrative law judge properly determined that the record evidence was insufficient to establish that the miner's death was due to pneumoconiosis, a necessary element of entitlement in a survivor's claim, we affirm the administrative law judge's findings pursuant to Section 718.205(c), and her denial of benefits.

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

JUDITH S. BOGGS
Administrative Appeals Judge