

BRB No. 05-0435 BLA

ADA LEDFORD o/b/o and)
Widow of CLIFFORD LEDFORD)
)
Claimant-Petitioner)
)
v.)
)
SANDY FORK MINING COMPANY,)
INCORPORATED) DATE ISSUED: 10/17/2005
)
and)
)
TRAVELERS INSURANCE COMPANY)
)
Employer/Carrier-Respondents)
)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order – Award of Miner’s Benefits and Denial of Survivor’s Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order – Award of Miner’s Benefits and Denial of Survivor’s Benefits (03-BLA-6357) of Administrative Law Judge Daniel J. Roketenetz on a miner’s claim and 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 miner with at least 15.74 years of coal mine employment, and adjudicated both the miner’s claim and the survivor’s claim pursuant to 20 C.F.R. Part 718. Decision and Order at 5-6. The administrative law judge noted that the miner’s claim was a subsequent claim filed on February 20, 2001, and found that the newly submitted evidence established the existence of pneumoconiosis and thus established one of the elements previously adjudicated against the miner.² Decision and Order at 17; *see* 20 C.F.R. §725.309(d). The administrative law judge further determined that the miner was totally disabled due to pneumoconiosis arising out of coal mine employment. Decision and Order at 17, 21-22. Consequently, the administrative law judge awarded benefits in the miner’s claim.

With regard to the survivor’s claim, the administrative law judge found that although claimant established the existence of pneumoconiosis arising out of coal mine employment, she did not establish that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Decision and Order at 33-34. Accordingly, the administrative law judge denied benefits in the survivor’s claim.

On appeal, claimant generally contends that the administrative law judge erred in failing to find that the miner’s death was due to pneumoconiosis. In response, employer urges affirmance of the administrative law judge’s Decision and Order. The Director, Office of Workers’ Compensation Programs, has stated that he will not respond on the merits of claimant’s appeal.³

¹ Claimant is Ada Ledford, the widow of the miner, Clifford Ledford, who died on September 10, 2001. Director’s Exhibit 18. Claimant filed her application for benefits on October 26, 2001. Director’s Exhibit 6.

² The miner’s previous application for benefits filed on February 9, 1995, was denied because the miner failed to establish any element of entitlement. Director’s Exhibit 2.

³ The parties do not challenge the administrative law judge’s award of benefits in the miner’s claim, his decision to credit the miner with 15.74 years of coal mine employment, his finding that employer was the properly designated responsible operator, his dependency findings, or his findings pursuant to 20 C.F.R. §§718.202(a) and 718.203(b) in the survivor’s claim. These findings are therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), 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. §718.205(a)(1)-(3); *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 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)-(c)(4). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death.⁴ 20 C.F.R. §718.205(c)(5); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to Section 718.205(c), claimant contends that because the miner had pneumoconiosis and was totally disabled, the administrative law judge erred in finding that pneumoconiosis was not an underlying factor in the miner's death. Claimant alleges that the administrative law judge failed to properly analyze the medical evidence concerning the issue of the cause of death in light of the fact that the record contains extensive documentation that the miner suffered from pneumoconiosis and that it caused a totally disabling respiratory impairment. Claimant's Brief at 3. Claimant also suggests that the administrative law judge may have "selectively analyzed" the medical evidence. *Id.* There is no merit to these contentions.

Contrary to claimant's argument, a finding that the miner was totally disabled due to pneumoconiosis does not establish that his death was due to pneumoconiosis pursuant to Section 718.205(c). Rather, claimant must prove that the miner's death was due to pneumoconiosis or its complications, or that pneumoconiosis was a substantially contributing cause of death. 20 C.F.R. §718.205(a)(3), (c); see *Griffith*, 49 F.3d at 186,

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner was last employed in the coal mine industry in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibits 1, 7, 8.

19 BLR at 2-116; *Trumbo*, 17 BLR at 1-87-88.

In the case at bar, the administrative law judge properly found that no medical evidence of record indicated that pneumoconiosis caused or hastened the miner's death. Decision and Order at 34. The administrative law judge noted accurately that the miner's death certificate listed the cause of death as respiratory failure due to pneumonia due to chronic lymphocytic leukemia. Decision and Order at 33; Director's Exhibit 18. Additionally, the administrative law judge observed that Dr. Abalos, the autopsy prosector, listed simple coal workers' pneumoconiosis as a diagnosis in the autopsy report, but did not render an opinion regarding the cause of the miner's death or indicate whether coal workers' pneumoconiosis was a contributing cause of death. Decision and Order at 34; Director's Exhibit 21. The administrative law judge further found that Dr. Chaney, one of the miner's treating physicians, stated that pneumoconiosis did not contribute to or hasten the miner's death from leukemia. Director's Exhibits 22, 27. Further, the administrative law judge found that all of the other physicians who addressed the cause of the miner's death indicated that pneumoconiosis did not cause, contribute to, or hasten the miner's death.⁵ Decision and Order at 33-34; Employer's Exhibits 1, 4, 6, 10, 11, 12.

In sum, the administrative law judge considered all of the relevant medical evidence, and properly found that there was no evidence supportive of claimant's burden to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). We therefore affirm his finding that claimant failed to establish that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c); *see Griffith*, 49 F.3d at 186, 19 BLR 2-116; *Trumbo*, 17 BLR at 1-87-88. Consequently, we affirm the denial of benefits in the survivor's claim.

⁵ The administrative law judge accorded the opinions of Drs. Baker and Simpao submitted in the miner's claim no weight at Section 718.205(c) because the physicians did not address the cause of the miner's death. Decision and Order at 33; Director's Exhibits 24, 25.

Accordingly, the administrative law judge's Decision and Order – Award of Miner's Benefits and Denial of Survivor's Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge