

BRB No. 06-0467 BLA

HELEN D. O'DELL)
(Surviving Divorced Spouse of SHIRLEY S.)
O'DELL))
)
Claimant-Petitioner)
)
v.)
) DATE ISSUED: 10/23/2006
LADY H COAL COMPANY)
)
and)
)
WEST VIRGINIA COAL WORKERS')
PNEUMOCONIOSIS FUND)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of William S. Colwell, Administrative Law Judge, United States Department of Labor.

Helen D. O'Dell, Rainelle, West Virginia, *pro se*.

Natalee A. Gilmore and Waseem A. Karim (Jackson Kelly PLLC), Lexington, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant,¹ representing herself, appeals the Decision and Order (04-BLA-5234) of Administrative Law Judge William S. Colwell denying benefits on a 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). This case involves a survivor's claim filed on October 1, 2001. The only contested issue in this case is whether the miner's death was due to pneumoconiosis. The administrative law judge 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). Accordingly the administrative law judge denied benefits. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.²

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

Because the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).³ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director*,

¹Claimant is the surviving, divorced spouse of the deceased miner who died on May 10, 2001. Director's Exhibit 9.

²On May 6, 2006, claimant, without the assistance of counsel, filed a statement in support of her appeal. By Order dated July 7, 2006, the Board accepted claimant's statement as part of the record. 20 C.F.R. §§802.211(e); 802.217. The Board stated that responses to claimant's letter could be filed within thirty days from receipt of its Order. 20 C.F.R. §802.212. Employer filed its supplemental response brief on August 10, 2006. We accept employer's supplemental response brief as part of the record.

³Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or

OWCP, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

The administrative law judge noted that Dr. Dawson completed the miner's death certificate. Dr. Dawson listed the miner's immediate cause of death as "cardiac arrest." Director's Exhibit 9. The administrative law judge found that this was consistent with the history that Dr. Dawson and the triage nurse were provided regarding the events that led to the miner being brought to the emergency room.⁴ Decision and Order at 8. The administrative law judge noted that Dr. Dawson also listed chronic obstructive pulmonary disease (COPD) as another significant condition contributing to death. The administrative law judge found, however, that Dr. Dawson's listing of COPD as a contributing cause of death was not sufficiently reasoned.⁵ *Id.*; *see generally Lango v.*

(2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or

(3) Where the presumption set forth at §718.304 is applicable.

(4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.

(5) Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death.

20 C.F.R. §718.205(c).

⁴On May 10, 2001, the miner collapsed after stepping off a bulldozer which he had been operating. Director's Exhibit 10. The miner was brought to the emergency room by ambulance. *Id.* Upon arrival, the miner was noted to be "without vital signs and...pulseless." *Id.* Dr. Dawson administered two doses of epinephrine and attempted defibrillation. *Id.* However, the miner was pronounced dead twenty-five minutes after arrival. *Id.*

⁵Dr. Dawson provided no explanation for his findings on the miner's death certificate. *See* Director's Exhibit 9. Moreover, the administrative law judge properly noted that Dr. Dawson did not attribute the miner's chronic obstructive pulmonary disease (COPD) to his coal mine employment. Decision and Order at 8. Consequently,

Director, OWCP, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997) (The mere statement of a conclusion by a physician, without any explanation of the basis for that statement, does not take the place of the required reasoning). The administrative law judge, therefore, permissibly found that the miner's death certificate is insufficient to establish that the miner's death was due to pneumoconiosis.⁶

Dr. Jarvis, the miner's treating physician, opined that the miner's death was due to pneumoconiosis.⁷ Director's Exhibit 11. The administrative law judge, however,

Dr. Dawson's listing of COPD does not constitute a finding of "legal" pneumoconiosis. See 20 C.F.R. §718.201(a)(2).

⁶Dr. Dawson also prepared an Emergency Room Note dated May 10, 2001, wherein he listed the following conditions: (1) cardiac arrest, possible embolism or massive heart attack; (2) coal workers' pneumoconiosis; (3) asthma and (4) smoker. Director's Exhibit 10. The administrative law judge noted that he could not equate these assessments with causes of death, finding that they merely constituted a list of conditions, findings or diagnoses made after examination. Decision and Order at 8.

⁷In a report dated October 9, 2002, Dr. Jarvis stated:

[The miner] was first seen regarding his CWP/COPD on 7-18-91. He was seen intermittently until August of 1998, when he was seen on a fairly regular basis for Black Lung follow up thereafter. During that period of time, basically, his only complaint related to his breathing. He had SOB/DOE, which became progressively worse over this time period; however, he did not have any symptoms such as chest pain, exertional or otherwise, edema, PND, nor were there physical findings to suggest CHF, such as rales, HJ reflux, hepatomegaly or edema. His chest x-rays, read by a B-reader, consistently showed pneumoconiosis. His electrocardiogram was normal.

This man spent 37 years working in the coal mines, and had significant exposure to cold [sic] dust. His death certificate lists the immediate cause of death as cardiac arrest. This is not a terribly appropriate diagnosis, as everyone dies from cardiac arrest. A person who is decapitated, ran [sic] over by a train, or falls off the roof of a 40-story building dies from cardiac arrest. The only documented disease from which he suffered was CWP/COPD, and the proximate cause of death was quite obviously his CWP/COPD.

properly discredited Dr. Jarvis's opinion because the doctor failed to provide an adequate explanation for his finding, stating only that he was "not in possession of any other evidence suggesting any other disease process or any other condition which could have caused his demise." See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 8; Director's Exhibit 11. The administrative law judge further noted that Dr. Jarvis's opinion, that the miner's death was due to pneumoconiosis, appeared to be based on the miner's lack of complaints and symptoms consistent with heart disease over the years. The administrative law judge, however, noted that Dr. Renn explained that some of the miner's symptoms, *i.e.*, shortness of breath and exertional dyspnea, could be caused by heart disease. Decision and Order at 8; see Director's Exhibit 12. The administrative law judge, therefore, permissibly found that Dr. Jarvis's opinion was insufficient to support a finding that the miner's death was due to pneumoconiosis.

The administrative law judge noted that Dr. Renn, the only other physician of record to address the cause of the miner's death, attributed the miner's death to ventricular fibrillation. Decision and Order at 9; Director's Exhibit 12. Dr. Renn opined that this condition was neither caused, nor contributed to, by the miner's coal dust exposure. Director's Exhibit 12. The administrative law judge found that Dr. Renn's opinion was well reasoned. *Clark, supra*; *Lucostic, supra*. The administrative law judge noted that Dr. Renn explained that the suddenness of the miner's death was consistent with an adverse cardiac event, not a respiratory death. Decision and Order at 8; Director's Exhibit 12. The administrative law judge also permissibly credited Dr. Renn's opinion, that pneumoconiosis did not contribute to the miner's death, over Dr. Jarvis's contrary opinion, based upon Dr. Renn's superior qualifications.⁸ *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Decision and Order at 8; Director's Exhibit 12.

There is no evidence contained in his chart, or made available to me, which suggests any other attributable causes to his death, and although cardiac arrest is mentioned on the death certificate, the disease causing his demise was described as "COPD." Again, I have to take issue with that diagnosis, as his cause of death, once again, [is] Coal Worker's Pneumoconiosis, which led to Chronic Obstructive Lung Disease. I am not in possession of any other evidence suggesting any other disease process or any other condition which could have caused his demise.

Director's Exhibit 11.

⁸Dr. Renn is Board-certified in Internal Medicine and Pulmonary Disease. Director's Exhibit 12. The qualifications of Drs. Dawson and Jarvis are not found in the record.

Because it is based upon substantial evidence,⁹ the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) is affirmed.¹⁰

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

⁹In her May 6, 2006 letter, claimant contends that long term coal dust exposure can cause cor pulmonale which can cause cardiac arrest and sudden death. The record, however, does not contain any evidence of cor pulmonale. Hence, there is no medical evidence which attributes the miner's death to cor pulmonale.

¹⁰Because there is no evidence of complicated pneumoconiosis in the record, claimant is precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. *See* 20 C.F.R. §718.205(c)(3).