

BRB No. 07-0330 BLA

P.M. )  
(Widow of H.M.) )  
 )  
Claimant-Petitioner )  
 )  
v. ) DATE ISSUED: 10/30/2007  
 )  
CORNELL COALS, INCORPORATED )  
 )  
and )  
 )  
KENTUCKY CENTRAL INSURANCE )  
COMPANY )  
c/o AMERICAN RESOURCES )  
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 of Adele Higgins Odegard,  
Administrative Law Judge, United States Department of Labor.

Leroy Lewis, Hyden, Kentucky, for claimant.

Johanna F. Ellison (Ferreri & Fogle), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order (05-BLA-5684) of Administrative Law Judge Adele Higgins Odegard denying benefits 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 found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Because the evidence did not establish the existence of pneumoconiosis, the administrative law judge also found that the evidence did not 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 contends that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant also contends that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). 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.<sup>2</sup>

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).

Benefits are payable on survivors' claims filed on or after January 1, 1982 only if the miner's death is due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). However, before any finding of entitlement can be made in a survivor's claim, a claimant must establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and that the pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

Claimant argues that the administrative law judge erred in finding that the diagnoses of chronic obstructive pulmonary disease and respiratory failure contained in

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<sup>1</sup> Claimant is the surviving spouse of the deceased miner who died on March 24, 1995. Director's Exhibit 9.

<sup>2</sup> We affirm the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3) as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

the miner's treatment notes did not establish the existence of pneumoconiosis. We disagree. Because the etiology of the diseases was not addressed, the administrative law judge properly found that the diagnoses of chronic obstructive pulmonary disease and respiratory failure contained in the miner's treatment records did not support a finding of pneumoconiosis. 20 C.F.R. §718.201(a)(2); Decision and Order at 9; Director's Exhibits 11, 25; Claimant's Exhibit 1. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), we affirm the administrative law judge's denial of benefits. *Trumbo*, 17 BLR at 1-87-88. Consequently, we need not address claimant's contentions of error regarding the administrative law judge's finding pursuant to 20 C.F.R. §718.205(c). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge