

BRB No. 00-1210 BLA

MARY E. COLEMAN )  
(Widow of FELIX H. COLEMAN) )  
 )  
 Claimant-Petitioner )

v. )

DATE ISSUED:

HARMAN MINING CORPORATION )

and )

OLD REPUBLIC 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 Denying Benefits of Linda S. Chapman,  
Administrative Law Judge, United States Department of Labor.

Daniel Sachs (Law Offices of Daniel Sachs), Springfield, Virginia, for  
claimant.

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

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order Denying Benefits (00-BLA-0233) of Administrative Law Judge Linda S. Chapman 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).<sup>2</sup> This case involves a survivor's claim filed on March 10, 1999. After

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<sup>1</sup>Claimant is the surviving spouse of the miner, who died on May 19, 1998. Director's Exhibit 5.

<sup>2</sup>The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending

crediting the miner with thirty-eight and one half years of coal mine employment, the administrative law judge considered the instant claim under the applicable regulations at 20 C.F.R. Part 718 (2000). The administrative law judge found that claimant failed to establish that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(1) and (a)(4) (2000). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not presently intend to participate in this appeal.

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).

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on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

Inasmuch as 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).<sup>3</sup> See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). 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 (4<sup>th</sup> Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

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<sup>3</sup>Section 718.205(c) provides, in pertinent part, 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
- (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.

20 C.F.R. §718.205(c).

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(1) and (a)(4). Any error the administrative law judge may have made in finding that claimant failed to establish the existence of pneumoconiosis was harmless error, however, inasmuch as survivor's benefits are precluded. The record does not contain any evidence which, if credited, could support a finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), other than the miner's death certificate, which the administrative law judge properly discounted. *See Larioni v. Director, OWCP*, 6 BLR 1-710 (1983); *see Neeley, supra*. The administrative law judge found that the original death certificate document did not mention pneumoconiosis, and, according to claimant's testimony, was later changed at her request to include pneumoconiosis as a cause of the miner's death.<sup>4</sup> Decision and Order at 23-25; Director's Exhibit 5; Hearing Tr. at 32-33. The administrative law judge determined that the miner's death certificate was thus not reliable evidence that the miner had pneumoconiosis or that the condition contributed to the miner's death. *See Hutchins v. Director, OWCP*, 8 BLR 1-16 (1985); Decision and Order at 23-25; Director's Exhibit 5. Because the record does not contain any additional medical evidence indicating that the miner's death was caused, or hastened, by pneumoconiosis, claimant has not met her burden of establishing death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(1)-(3).<sup>5</sup> Consequently, claimant's entitlement to survivor's benefits is precluded.

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<sup>4</sup>The miner's death certificate indicated that acute respiratory failure and COPD were the immediate causes of the miner's death. "COPD" is crossed out, and "Coalminer's Pneumoconiosis ('black lung')" is inserted on the form. The administrative law judge correctly stated that claimant testified that this change was made at her request, although as the administrative law judge noted, it is not clear who changed the form. Decision and Order at 23; Director's Exhibit 5; Hearing Tr. at 32-33.

<sup>5</sup>The record does not include any evidence of complicated pneumoconiosis which could have given rise to the presumption of death due to pneumoconiosis pursuant to 20 C.F.R. §718.304. *See* 20 C.F.R. §§718.205(c)(3), 718.304.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge