

BRB No. 03-0132 BLA

PATRICIA A. COLVARD)
(Widow of ROBERT M. COLVARD))

Claimant-Petitioner)

v.)

EASTERN DOMINION COAL)
COMPANY)

and)

OLD REPUBLIC INSURANCE)
COMPANY)

Employer/Carrier-)
Respondents)

WESTERN DOMINION COAL)
COMPANY)

and)

OLD REPUBLIC INSURANCE)
COMPANY)

Employer/Carrier)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS,)
UNITED STATES DEPARTMENT OF)
LABOR)

Party-in-Interest)

DATE ISSUED: 09/17/2003

DECISION AND ORDER

Appeal of the Decision and Order - Denial of Benefits of Richard T.
Stansell-Gamm, Administrative Law Judge, United States Department of
Labor.

Patricia A. Colvard, East Stone Gap, Virginia, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for Eastern Associated Coal Company and Old Republic Insurance Company.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order - Denial of Benefits (2001-BLA-0668) of Administrative Law Judge Richard T. Stansell-Gamm 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).² Initially, the administrative law judge found that this case involves the consolidation of the second request for modification of the denial of the miner's duplicate claim filed on November 14, 1994 and a survivor's claim filed on October 31, 2000.³

¹ Claimant is the widow of the miner, Robert M. Colvard, who died on June 22, 1999. Director's Exhibit 80.

² 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 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³ The miner filed his initial application for benefits on October 19, 1992, which was denied by the district director on March 17, 1993. Director's Exhibits 90-1, 90-22. The miner filed a second application for benefits on November 12, 1994, which was denied by the district director on March 22, 1995. Director's Exhibits 1, 13. The case was thereafter transferred to the Office of Administrative Law Judges. Director's Exhibit 33. In a Decision and Order issued on August 22, 1996, Administrative Law Judge Mollie Neal denied benefits, finding that the miner failed to establish the existence of pneumoconiosis or a totally disabling respiratory impairment. Director's Exhibit 45. The Board affirmed the decision on July 3, 1997. *Colvard v. Eastern Associated Coal Co., et al*, BRB No. 96-1725 BLA (July 3, 1997)(unpub.); Director's Exhibit 56.

The miner filed a request for modification of the denial of his duplicate claim on September 25, 1997, which was denied by the district director on June 19, 1998.

Decision and Order at 1, 3; Director's Exhibits 71, 80, 102. Based on the filing dates, the administrative law judge adjudicated both the miner's claim and the survivor's claim pursuant to 20 C.F.R. Part 718, and based on the relevant evidence of record, credited the miner with eleven years and eight months of coal mine employment. In addition, the administrative law judge found Eastern Dominion Coal Company to be the responsible operator in this case. Addressing the merits of entitlement, the administrative law judge found the medical evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203. With regard to the survivor's claim, the administrative law judge found the medical evidence insufficient to establish that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(c).

In the miner's claim, the administrative law judge found the evidence sufficient to establish a material change in conditions as well as a change in conditions pursuant to 20 C.F.R. §§725.309 and 725.310 (2000),⁴ based on his finding of the existence of pneumoconiosis arising out of the miner's coal mine employment. In addition, the administrative law judge found the medical evidence of record, old and newly submitted evidence, sufficient to establish the existence of a totally disabling respiratory or pulmonary condition pursuant to 20 C.F.R. §718.204(b)(2). However, the administrative law judge found the evidence insufficient to establish that pneumoconiosis was a substantially contributing cause of the miner's total respiratory disability pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits in both the miner's claim and the survivor's claim.

In response to claimant's *pro se* appeal, employer urges affirmance of the administrative law judge's denial of benefits in both the miner's claim and the survivor's claim. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.⁵

Director's Exhibits 57, 68. A second request for modification was filed on May 13, 1999, Director's Exhibit 71, and is the basis for the current appeal in the miner's claim.

⁴ The amendments to the regulations at 20 C.F.R. §§725.309 and 725.310 (2000) do not apply to claims, such as the instant claims, which were pending on January 19, 2001. *See* 20 C.F.R. §725.2.

⁵ The parties do not challenge the administrative law judge's decision to credit the miner with eleven years and eight months of coal mine employment, his determination that Eastern Dominion Coal Company is the responsible operator or the administrative law judge's finding of total respiratory disability under 20 C.F.R. §718.204(b)(2).

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. With regard to the survivor's claim, a review of the record indicates that the administrative law judge properly found that the medical evidence was insufficient to establish that the miner's death was due to pneumoconiosis or that the miner's death was due to complications of pneumoconiosis as neither the death certificate nor any of the physicians of record provided credible opinions that the miner's death was due to pneumoconiosis.⁶ Decision and Order at 20-21; 20 C.F.R. §§718.205(c)(1), (2); Director's Exhibits 80, 82, 83, 88, 89, 95-98; Employer's Exhibit 1. In particular, the administrative law judge found the lone opinion that could be supportive of claimant's burden, the October 1999 letter by Dr. Kiser, the miner's treating physician, was not sufficient to establish entitlement because his report was not accompanied by any documentation and the physician did not provide the rationale for his conclusion.⁷ Therefore, the administrative law judge reasonably

Inasmuch as these findings are not adverse to claimant, they are affirmed as unchallenged. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

⁶ The death certificate, signed by Dr. Kiser, listed the immediate cause of the mine's death as cardiorespiratory arrest, due to myocardial infarction. Director's Exhibit 80.

⁷ Dr. Kiser, in a letter dated October 15, 1999, stated:

I followed Robert M. Colvard, Sr. for multiple years in regard to pulmonary disease, pneumoconiosis, hypertension. Patient had very severe pulmonary disease with noted severe shortness of breath with a bronchospastic component. Patient required aggressive treatment in order to maintain his functional capacity. Patient died on June 22, 1999 of a MI

found that the opinion of Dr. Kiser, despite his status as the miner's treating physician, was insufficient to establish either that the miner's death was due to pneumoconiosis or that death was caused by complications of pneumoconiosis. Decision and Order at 20-21; Director's Exhibit 82; 20 C.F.R. §718.205(c)(1), (2); *see Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *see also Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998). Likewise, the administrative law judge properly found that the miner's death was not due to complicated pneumoconiosis inasmuch as none of the physicians of record diagnosed complicated pneumoconiosis pursuant to Section 718.304. Decision and Order at 20; 20 C.F.R. §718.304; *see Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, BLR (4th Cir. 1999); *see also Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*).

In addition, we affirm the administrative law judge's finding that the evidence of record was insufficient to establish that pneumoconiosis was a substantial contributing cause of the miner's death or hastened the miner's death in any way. Decision and Order at 21-22; 20 C.F.R. §718.205(c)(2), (c)(5). The administrative law judge reasonably found that Dr. Kiser's report, which stated that he treated the miner for severe shortness of breath, was not sufficient to establish entitlement as it was neither reasoned nor documented. Decision and Order at 21; Director's Exhibit 80; *see Akers*, 131 F.3d 438, 21 BLR 2-269; *Hicks*, 138 F.3d 524, 21 BLR 2-323. Likewise, the administrative law judge reasonably found that Dr. Colby's opinion, that some degree of pulmonary compromise was involved in the miner's death, was insufficient to establish entitlement as the physician did not relate this condition to the miner's pneumoconiosis. Decision and Order at 21; Director's Exhibit 80; *see Mays*, 176 F.3d 753, 21 BLR 2-587; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). Inasmuch as the administrative law judge has considered all of the relevant evidence, we affirm his finding that claimant has failed to carry her burden to establish that the miner's death was due to pneumoconiosis.

With regard to the miner's claim, the administrative law judge found claimant failed to establish entitlement to benefits inasmuch as the medical evidence of record was insufficient to establish that the miner's total respiratory disability was due to pneumoconiosis pursuant to Section 718.204(c). Decision and Order at 30. In particular, the administrative law judge found that the only evidence which could be interpreted as supportive of claimant's burden, the October 1999 letter of Dr. Kiser, was insufficient to

with coronary artery disease and pneumoconiosis.

Director's Exhibit 82.

establish that pneumoconiosis was a substantially contributing factor in the miner's total respiratory disability inasmuch as Dr. Kiser did not relate the miner's pulmonary disease and shortness of breath to his pneumoconiosis or coal mine employment. Decision and Order at 30; Director's Exhibit 82; 20 C.F.R. §718.204(c); *see Hobbs v. Clinchfield Coal Co. [Hobbs II]*, 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). Inasmuch as the administrative law judge has considered all of the relevant medical evidence and reasonably found the lone opinion supportive of claimant's burden insufficient to establish disability causation pursuant to Section 718.204(c), we affirm his finding that claimant failed to establish entitlement to benefits in the miner's claim.⁸ *See Hobbs II*, 45 F.3d 819, 19 BLR 2-86; *Robinson*, 914 F.2d 35, 14 BLR 2-68.

⁸ In light of the affirmance of the administrative law judge's findings that the medical evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) and his finding that pneumoconiosis was a substantially contributing cause of the miner's total respiratory disability pursuant to Section 718.204(c), we need not address employer's allegations of error in the administrative law judge's findings pursuant to Section 718.202(a). *See generally Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER
Administrative Appeals Judge