

BRB No. 03-0170 BLA

MARIE E. ACORD)	
(Widow of LARRY RAY ACORD))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL CORPORATION)	DATE ISSUED: 09/22/2003
)	
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 of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

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

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (01-BLA-0526) of Administrative Law Judge Pamela Lakes Wood denying benefits on claims 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 This case involves a miner's claim filed on July 21, 2000 and a survivor's claim filed on October 23, 2000. After noting that the parties stipulated that the miner was engaged in coal mine employment for at least fourteen years, the administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge further found that claimant was entitled to a presumption that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge also found that the evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b).³ However, the administrative law judge found that the evidence was insufficient to establish that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits on the miner's claim. The administrative law judge further 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 also denied benefits on the survivor's claim. On appeal, claimant challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.204(c) and 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.

The Board 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).

¹ Claimant is the surviving spouse of the deceased miner who died on September 23, 2000. Director's Exhibit 10.

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 provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c), is now found at 20 C.F.R. §718.204(b) while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b), is now found at 20 C.F.R. §718.204(c).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits on the miner's claim under 20 C.F.R. Part 718. The administrative law judge properly found that there is no evidence of record supportive of a finding that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).⁴ See *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).⁵ The administrative law judge properly found that the opinions of Drs. Vasudevan,⁶ Ranavaya,⁷ Caffrey,⁸ Naeye⁹ and Fino¹⁰ are insufficient to

⁴ Revised Section 718.204(c)(1) provides that:

A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in §718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a substantially contributing cause of the miner's disability if it:

(i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or

(ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1).

⁵ In *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990), the United States Court of Appeals for Fourth Circuit, within whose jurisdiction the instant case arises, held that, pursuant to 20 C.F.R. §718.204(b) (2000), a miner must prove by a preponderance of the evidence that his pneumoconiosis was at least a contributing cause of his totally disabling respiratory impairment.

⁶ Dr. Vasudevan opined that the miner's moderately severe pulmonary impairment was 100% attributable to his obesity. Director's Exhibit 18.

⁷ Dr. Ranavaya indicated that the miner was not totally disabled by pneumoconiosis prior to his death. Director's Exhibit 23.

⁸ Dr. Caffrey opined that the miner's very mild degree of coal workers' pneumoconiosis would not have caused pulmonary disability. Employer's Exhibit 2. Dr. Caffrey opined that the miner suffered from two debilitating medical conditions; morbid obesity and sleep apnea. *Id.* Dr. Caffrey further opined that the miner's morbid obesity and sleep apnea were not caused by, or in any way related to, his coal mine employment.

establish that the miner's total disability was due to pneumoconiosis. Decision and Order at 11. Claimant notes that "pneumoconiosis was listed as a contributing factors [sic] in the conditions affecting [the miner] during his final hospitalization." Claimant's Brief at 4. Although the miner's final hospitalization records document a diagnosis of coal workers' pneumoconiosis, they do not support a finding that the miner's total disability was due to this disease. See Employer's Exhibit 6. Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Consequently, we affirm the administrative law judge's denial of benefits on the miner's claim. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

We now turn our attention to the administrative law judge's consideration of the survivor's claim. Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). 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).¹¹ See 20 C.F.R. §§718.1, 718.202,

Id. Dr. Caffrey reiterated his opinions during a November 20, 2001 deposition. Employer's Exhibit 7.

⁹ Dr. Naeye opined that the miner's few lesions of pneumoconiosis affected so little lung tissue that they could not have had a measurable effect on lung function or caused a disability. Employer's Exhibit 3. Dr. Naeye opined that the miner was severely disabled by his obesity-initiated Pickwickian syndrome. *Id.* Dr. Naeye reiterated his opinions during a November 26, 2001 deposition. Employer's Exhibit 8.

¹⁰ Dr. Fino opined that there was no evidence of any primary pulmonary disease causing impairment or disability. Employer's Exhibit 5. Dr. Fino further opined that the miner's coal workers' pneumoconiosis neither caused, contributed to, nor participated in any disability. *Id.* Dr. Fino opined that the miner was disabled due to morbid obesity and constrictive pericarditis, conditions neither caused nor contributed to by the inhalation of coal mine dust. *Id.*

¹¹ Section 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

718.203, 718.205(c); *Neeley v. Director, 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*, 113 S.Ct. 969 (1993).

The administrative law judge noted that Dr. Amin listed "black lung" as one of the causes of death on the miner's death certificate.¹² Decision and Order at 12; Director's Exhibit 10. Although the administrative law judge acknowledged that Dr. Amin was the miner's treating physician, she found that Dr. Amin's opinion regarding the cause of the miner's death was conclusory and not sufficiently reasoned.¹³ Decision and Order at 12. *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Inasmuch as the administrative law judge's basis for discrediting Dr. Amin's opinion is unchallenged on appeal, it is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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- (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).

¹² Dr. Amin attributed the miner's death to pulmonary edema and respiratory failure due to congestive heart failure, obstructive sleep apnea, black lung and cor pulmonale. *Id.*

In her consideration of the evidence pursuant to 20 C.F.R. §718.205(c), the administrative law judge inadvertently stated that Dr. Patel completed the miner's death certificate. See Decision and Order at 12. The administrative law judge, in her earlier summary of the medical evidence, had accurately identified Dr. Amin as the physician who completed the miner's death certificate. See Decision and Order at 6.

The administrative law judge properly found that the remaining medical evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis. Decision and Order at 12. Dr. Poolos, the autopsy prosector, attributed the miner's death to chronic congestive heart failure secondary to calcific pericarditis and morbid obesity. Director's Exhibit 11. Drs. Ranavaya, Caffrey, Naeye and Fino, the only other physicians to address the cause of the miner's death, opined that the miner's death was not due to pneumoconiosis.¹⁴ Employer's Exhibits 3-5. Because it is based upon substantial evidence, we affirm the administrative law judge's finding that the medical evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).¹⁵ We, therefore, affirm the administrative law judge's denial of benefits on the survivor's claim.

¹³ Dr. Amin provided no explanation for attributing the miner's death to "black lung." Director's Exhibit 10.

¹⁴ Although Dr. Ranavaya did not provide an opinion as to the actual cause of the miner's death, Drs. Caffrey, Naeye and Fino addressed this issue. Dr. Caffrey attributed the miner's death to complications from his morbid obesity and his obstructive sleep apnea with marked pulmonary edema and cardiomegaly. Employer's Exhibit 2. Dr. Naeye attributed the miner's death to multiple complications from his obesity-initiated Pickwickian syndrome, resulting in chronic cardio-pulmonary failure and kidney failure. Employer's Exhibits 2, 8. Dr. Fino attributed the miner's death to constrictive pericarditis and morbid obesity. Employer's Exhibit 5.

¹⁵ We affirm, as unchallenged on appeal, the administrative law judge's finding that the evidence is insufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 13. The administrative law judge, therefore, properly found that claimant was precluded from establishing that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(3). *Id.*

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

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, JR.
Administrative Appeals Judge