

BRB No. 03-0325 BLA

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| PANSY PRATER HOPKINS (Widow of MARVIN HOPKINS) |) |) |
| |) |) |
| Claimant-Petitioner |) |) |
| |) |) |
| v. |) | DATE ISSUED: 09/29/2003 |
| |) |) |
| DIRECTOR, OFFICE OF WORKERS= COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR |) |) |
| |) |) |
| Respondent |) | DECISION and ORDER |

Appeal of the Decision and Order Denying Widow=s Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Billy J. Moseley (Webster Law Offices), Pikeville, Kentucky, for claimant.

Jennifer U. Toth (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers= Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant, the miner=s widow,¹ appeals the Decision and Order (2001-BLA-

¹ Claimant is Pansy Prater Hopkins, the surviving spouse of the deceased miner, Marvin Hopkins, who died on January 2, 1997. Decision and Order at 2; Director=s Exhibit 8. Claimant filed this survivor=s claim on December 30, 1999. Director=s Exhibit 1.

0234) of Administrative Law Judge Thomas F. Phalen, Jr., 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).²

The administrative law judge credited the miner with twenty-eight years of coal mine employment and adjudicated the claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge considered the evidence of record and found that it was 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(b), but insufficient to establish that the miner=s death was due to pneumoconiosis pursuant to 20 C.F.R. ' 718.205(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in failing to find that the miner=s death was due to pneumoconiosis pursuant to 20 C.F.R. ' 718.205(c). The Director, Office of Workers= Compensation Programs, responds, urging affirmance of the denial of benefits.

The Board=s scope of review is defined by statute. If the administrative law judge=s findings of fact and conclusions of law 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 into the Act by 30 U.S.C. ' 932(a); *O=Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor=s benefits, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. See 20 C.F.R. ' ' 718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). For survivors= claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner=s death, pneumoconiosis was a substantially contributing cause or factor leading to the miner=s death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. ' 718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of death if it hastens the miner=s death. 20 C.F.R. ' 718.205(c)(5); *Griffith v. Director, OWCP*,

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).

49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

After consideration of the administrative law judge's Decision and Order, the arguments of the parties and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error.

Claimant contends that the administrative law judge erred in failing to give determinative weight to the opinions of Dr. Rudd, who attributed the miner's death to pneumoconiosis. In his consideration of the evidence, the administrative law judge reasonably found that since there was no competent medical evidence which attributed the miner's death to pneumoconiosis, claimant failed to establish entitlement to survivor's benefits.³ The administrative law judge acted within his discretion in according little probative weight to the opinion of Dr. Rudd, in spite of his status as the miner's treating physician, since the physician did not explain the rationale for his conclusion or identify the observations, findings or particular objective data he relied on in reaching his conclusion that pneumoconiosis caused or contributed to the miner's death. *Peabody Coal Co. v. Odom*, --- F.3d ---, 2003 WL 21998333 (6th Cir. 2003); *Eastover Mining Co. v. Williams*, 338 F.3d 501, --- BLR --- (6th Cir. 2003); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984); Decision and Order at 8, 13-14; Director's Exhibits 17, 26. Consequently, we affirm the administrative law judge's finding that the medical opinions of Dr. Rudd failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). We, therefore, affirm the administrative law judge's finding that the medical evidence failed to establish that pneumoconiosis caused, contributed to, or hastened the miner's death. 20 C.F.R. ' 718.205(c); see *Brown*, 996 F.2d 812, 17 BLR 2-135.

Claimant has the general burden of establishing entitlement and bears the risk of non-persuasion if her evidence is found insufficient to establish a crucial element of entitlement. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *White v. Director, OWCP*, 6 BLR 1-368 (1983). Furthermore, the administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, see *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See

³ The death certificate, signed by Dr. Reddy, lists the causes of the miner's death as asystole due to infero-lateral myocardial infarction due to arteriosclerotic heart disease. Decision and Order at 13; Director's Exhibit 8.

Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987).

In this case, the administrative law judge permissibly found that the evidence was insufficient to establish death due to pneumoconiosis because he found there were no credible medical opinions attributing the miner=s death to pneumoconiosis.

Clark, 12 BLR 1-149; *Fields*, 10 BLR 1-19. Inasmuch as claimant has not met her burden of proof on an essential element of entitlement under 20 C.F.R. Part 718 in this survivor=s claim, benefits are precluded. 20 C.F.R. ' 718.205(c); see *Brown*, 996 F.2d 812, 17 BLR 2-135; *Clark*, 12 BLR 1-149; *Trent*, 11 BLR 1-26; *Trumbo*, 17 BLR 1-85; *Neeley*, 11 BLR 1-85.

Accordingly, the Decision and Order of the administrative law judge denying benefits in this survivor=s claim is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA c. McGRANERY
Administrative Appeals Judge