

BRB No. 03-0507 BLA

MAE CALDWELL)
(Widow of WRIGHT CALDWELL))
)
Claimant-Petitioner)

v.)

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

DATE ISSUED: 09/25/2003

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan, Hyden, Kentucky, for claimant.

Sarah M. Hurley (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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (02-BLA-5489) of Administrative Law Judge Rudolf L. Jansen denying benefits 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). On September 4, 2001, following the death of her husband, Wright Caldwell, claimant filed an application for survivor's benefits under the Act. Director's Exhibit 2. The Office of Workers' Compensation Programs denied this claim on June 27, 2002. On December 17, 2002, pursuant to claimant's request, a formal hearing was held before an administrative law judge.

Accepting the stipulation of the parties, the administrative law judge credited claimant with thirteen years of coal mine employment and found that claimant's duties consisted mainly of drilling and shooting. Because the Director, Office of Workers' Compensation Programs (the Director) conceded the existence of pneumoconiosis arising out of coal mine employment, the administrative law judge held that the only issue before him for consideration was whether the miner's death was due to pneumoconiosis.

Finding that there was no evidence addressing the impact of the miner's pneumoconiosis on his cardiac condition or death, the administrative law judge found that claimant had failed to carry her burden of proving that the miner's death was due to pneumoconiosis. Thus benefits were denied.¹

On appeal, claimant challenges the administrative law judge's finding regarding the existence of pneumoconiosis and whether the miner's death was due to pneumoconiosis. The Director responds, asking the Board to affirm 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment, and that the death was due to pneumoconiosis. See 20 C.F.R. §§718.202(a); 718.203; 718.205(a)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2), (c)(4). 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); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

On appeal, claimant asserts that the administrative law judge found that the x-ray evidence, 20 C.F.R. §718.202(a)(1), and the medical opinion evidence, 20 C.F.R.

¹ On the death certificate the cause of death was identified as cardiogenic shock, severe coronary artery disease and myocardial infarction. Other conditions contributing to death are listed as severe gastrointestinal bleeding, pneumonia, and a urinary tract infection. Director's Exhibit 3.

§718.202(a)(4), failed to establish the existence of pneumoconiosis. However, in this case, the administrative law judge specifically found that since the Director conceded the existence of pneumoconiosis and the cause of the pneumoconiosis, the only issue to address was whether the miner's death was due to pneumoconiosis. *See* Decision and Order at 5. Thus, contrary to claimant's assertion, the existence of pneumoconiosis was established in this case.

With respect to the cause of the miner's death, the administrative law judge found that neither the death certificate nor the hospital records indicates that pneumoconiosis contributed to or hastened the miner's death. Then, turning to the opinion of Dr. Wagel, the administrative law judge found that while Dr. Wagel stated that pneumoconiosis contributed to the miner's medical problems, he did not opine that pneumoconiosis caused, hastened or contributed to the miner's death.

Claimant asserts that the reports from Lutheran Hospital of Indiana diagnose the miner with pulmonary infiltrates, and list respiratory failure and pneumonia as diagnoses at the time of death. Claimant also asserts that Dr. Orlow stated that the miner suffered from chronic obstructive pulmonary disease upon his final admission, and that the death certificate signed by Dr. Orlow stated that pneumonia was a "[c]ondition contributing to death."

However, as the administrative law judge properly found, there is no evidence in this record that addresses the impact of *pneumoconiosis* on the miner's cardiac condition and death. Moreover, while Dr. Wagel stated that "[c]ertainly contributing to all of his medical problems is his known/long established black lung disease," the administrative law judge acted within his discretion in finding that this statement was insufficient to satisfy claimant's burden of establishing that pneumoconiosis contributed to or hastened the miner's death. Consequently, we affirm the administrative law judge's finding that claimant failed to carry her burden of proving that the miner's death was due to pneumoconiosis. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown*, 996 F.2d 812, 17 BLR 2-135.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge