

BRB No. 08-0237 BLA

S.J.S. )  
(Widow of J.A.S.) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 ) DATE ISSUED: 09/29/2008  
CLINCHFIELD COAL COMPANY )  
 )  
Employer-Respondent )  
 )  
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 William S. Colwell,  
Administrative Law Judge, United States Department of Labor.

S.J.S., Clintwood, Virginia, *pro se*.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for  
employer.

Before: SMITH, McGRANERY and BOGGS, Administrative Appeals  
Judges.

PER CURIAM:

Claimant, without the assistance of legal counsel, appeals the Decision and Order Denying Benefits (2006-BLA-05194) of Administrative Law Judge William S. Colwell 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).<sup>1</sup> Claimant

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<sup>1</sup> Jerry Murphree, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the

filed her survivor's claim on November 22, 2004.<sup>2</sup> The administrative law judge credited the miner with thirty-four 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 found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or death due to pneumoconiosis under 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer has responded, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has submitted a letter indicating that he will not file a substantive response to claimant's appeal, unless specifically requested to do so by the Board.

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 Co.*, 12 BLR 1-176, 1-177 (1989). 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.<sup>3</sup> 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).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, 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. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading*

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administrative law judge's decision, but Mr. Murphree is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1985) (Order).

<sup>2</sup> Claimant is the widow of the miner, J.A.S., who died on September 6, 2004. Director's Exhibits 2, 8. The miner filed a claim for benefits on August 30, 2002, which was denied by Administrative Law Judge Molly W. Neal, in a Decision and Order issued on October 13, 2004. Judge Neal determined that the miner did not establish any of the elements of entitlement. There is no indication in the record that any further action was taken with respect to the miner's claim. *See* Decision and Order at 4.

<sup>3</sup> The law of the United States Court of Appeals for the Fourth Circuit is applicable in this case as the miner's coal mine employment was in Virginia. *See Shupe v. Director*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 3.

*Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' 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), (4). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Bill Branch Coal Co. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert denied*, 506 U.S. 1050 (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).

Pursuant to Section 718.205(c), the administrative law judge addressed the miner's death certificate, the medical opinions of Drs. Nwauche, Vanover, Castle, and Fino, and the miner's hospital records and treatment notes. Dr. Nwauche attended the miner during his final hospitalization and prepared the death certificate. He listed cardiopulmonary arrest, coronary artery disease, and myocardial infarction as primary causes of death, and identified coal workers' pneumoconiosis, diabetes mellitus, congestive heart failure, and hypoxia as contributing causes of death. Director's Exhibit 8. In a subsequent letter, Dr. Nwauche stated:

[J.A.S. had] well documented coal workers' pneumoconiosis. He had, by the medical records, well documented symptoms of [d]yspnea and severe difficulty breathing on exertion. This is often associated with [h]ypoxemia, lack of adequate oxygen. [J.A.S.] had significant coal workers' pneumoconiosis that would contribute to a [c]ardiopulmonary strain and exertional [h]ypoxemia and thereby contribut[e] to and aggravat[e] [m]yocardial ischemia associated with his [c]oronary [a]rtery [d]isease.

Director's Exhibit 12. Dr. Vanover indicated in her report that she had occasionally examined the miner when his primary care physician was unavailable and had known the miner for approximately thirty years. Claimant's Exhibit 3. Dr. Vanover stated that "during the entire time I have known [J.A.S.], he was developing progressively more severe lung disease but he continued to work." *Id.* Dr. Vanover concluded that the miner suffered from coal workers' pneumoconiosis and that "this was a direct, rather than indirect, cause of his ultimate demise." *Id.*

Dr. Castle reviewed the medical evidence of record and indicated that the miner's death was caused by coronary artery disease and congestive heart failure due to atherosclerosis related to the miner's diabetes, obesity and use of cigarettes. Director's Exhibit 11; Employer's Exhibit 38. Dr. Castle explained that the objective studies of record show that the absence of a respiratory impairment and the enlargement of the left side of the miner's heart supported the conclusion that the miner's death was not related

to coal dust exposure. *Id.* Dr. Fino also reviewed the medical evidence and concluded that it did not support a diagnosis of coal workers' pneumoconiosis or a respiratory impairment. Employer's Exhibits 39, 41. Dr. Fino indicated that the miner's death was a cardiac event caused by vascular disease and atherosclerosis, both of which were unrelated to coal dust exposure, and cited to the same data upon which Dr. Castle relied. *Id.*

The administrative law judge found that Dr. Nwauche's opinion, that coal workers' pneumoconiosis was a cause of the miner's death, was entitled to little weight, stating:

Dr. Nwauche was [not] acquainted with the miner prior to his final hospitalization, because he relied upon a medical history of pneumoconiosis that does not appear to be supported by any other evidence, and because of the persuasive explanations of Drs. Castle and Fino refuting Dr. Nwauche's connect[ion of] pneumoconiosis [to] the miner's cardiopulmonary strain and myocardial ischemia.

Decision and Order at 16. Similarly, the administrative law judge determined that Dr. Vanover's opinion, that coal workers' pneumoconiosis was a direct cause of the miner's death, was unreasoned because she failed to identify any of the evidence upon which she relied in forming her opinion and did not explain how the miner's lung disease contributed to his heart disease. *Id.* With respect to the opinions of Drs. Castle and Fino, that pneumoconiosis played no role in the miner's death, the administrative law stated:

I find the shared opinion of Dr. Castle and Dr. Fino persuasive. Their opinions are well documented and reasoned. They based their conclusions on a through review of the medical evidence in this case, which undeniably documented a history of cardiac problems, sleep apnea, diabetes, and obesity. I find that their opinions are supported by the echocardiograms, the x-ray evidence, physical findings, symptomatology, the miner's family history (both parents died of heart attacks), and the miner's hospital course.

*Id.* at 16-17. The administrative law judge concluded, therefore, that claimant failed to prove that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to Section 718.205(c). *Id.* at 17.

After consideration of the administrative law judge's Decision and Order in light of the evidence of record, we conclude that we must affirm the administrative law judge's findings under Section 718.205(c), as they are supported by substantial evidence and consistent with applicable law. The administrative law judge acted within his discretion as fact-finder in according greater weight to the opinions of Drs. Castle and Fino on the

grounds that their conclusions were more thorough, better explained, and more consistent with the underlying objective evidence. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 535, 21 BLR 2-323, 2-340 (4th Cir. 1998); *Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); Decision and Order at 16-17. In addition, the administrative law judge rationally found that although Drs. Nwauche and Vanover may have treated the miner, their opinions were not entitled to controlling weight on this basis, as they did not identify the objective evidence upon which they based their conclusions. 20 C.F.R. §718.104(d)(5); *see U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999); *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

Because the administrative law judge's weighing of the medical evidence relevant to the cause of the miner's death is rational and supported by substantial evidence, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis at Section 718.205(c).<sup>4</sup> We must also affirm, therefore, the denial of benefits in this survivor's claim. *Shuff*, 967 F.2d at 979-80, 16 BLR at 2-92-93; *Anderson*, 12 BLR at 1-112.

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<sup>4</sup> Because we have affirmed the administrative law judge's finding that claimant did not establish that pneumoconiosis caused, contributed to, or hastened the miner's death under 20 C.F.R. §718.205(c), we need not address the administrative law judge's finding that claimant did not prove that the miner had pneumoconiosis pursuant to 20 C.F.R. §718.202(a).



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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge