

BRB No. 89-3316 BLA

JUANITA J. HALL )  
(Widow of GEORGE HALL) )

Claimant-Petitioner )

v. )

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

Date Issued:

Respondent )

DECISION and ORDER

Appeal of the Decision and Order of Robert L. Hillyard, Administrative Law Judge, United States  
Department of Labor.

Robert W. Miller, Grayson Kentucky, for claimant.  
Rita A. Roppolo (David S. Fortney, Deputy Solicitor of

Labor; Donald S. Shire, Associate Solicitor;  
Rae Ellen Frank  
James, Deputy  
Associate  
Solicitor; Richard  
A. Seid and  
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: BROWN and DOLDER, Administrative Appeals Judges, and BONFANTI, Administrative Law  
Judge.\*

PER CURIAM:

\*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(Supp. V 1987).

Claimant, the miner's widow, appeals the Decision and Order (88-BLA-1586) of Administrative Law Judge Robert L. Hillyard 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). Based on the date of filing, March 16, 1984, the administrative law judge adjudicated the claim pursuant to the permanent regulations found at 20 C.F.R. Part 718. The administrative law judge credited claimant with five years of coal mine employment and found that claimant established the existence of coal workers' pneumoconiosis. The administrative law judge further determined that the evidence was insufficient to establish that the miner's pneumoconiosis arose out of dust exposure during his coal mine employment, and that the evidence does not establish the miner died as a result of that disease. Accordingly, the benefits were denied.<sup>1</sup> On appeal, claimant argues that the administrative law judge erred in determining the length of the miner's coal mine employment. Also, claimant argues that the administrative law judge erred in finding that the medical evidence did not establish the miner's coal mine employment contributed to his pneumoconiosis and that the miner died as a result of pneumoconiosis. The Director, Office of Workers' Compensation Programs, responds, seeking affirmance of the decision below.

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 by 30 U.S.C. §932(a); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

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<sup>1</sup>In regards to the miner's April 11, 1972 claim, the administrative law judge dismissed the claim as abandoned due to the miner's failure to take action within 60 days of the January 12, 1982 denial of the claim by the Deputy Commissioner. As this issue is unchallenged on appeal, see Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983), the administrative law judge's dismissal of this claim is affirmed.

Claimant argues that the administrative law judge erred in failing to find that the miner had worked in the mines a sufficient number of years to establish entitlement pursuant to the relevant statutory presumptions. Since the Act fails to provide any specific guidelines for the computation of time spent in coal mine employment, the Board will uphold the administrative law judge's determination if it is based on a reasonable method and supported by substantial evidence in the record considered as a whole. Vickery v. Director, OWCP, 8 BLR 1-430 (1986). In making his determination as to the length of the miner's coal mine employment, the administrative law judge considered third-party statements, the Social Security Administration's Itemized Statement of Earnings, and the testimony of claimant. The administrative law judge concluded, based primarily on the Social Security Statement of Earnings, which show eight quarters of coal mine employment between 1944 and 1946, that the miner engaged in coal mine employment for no more than five years.<sup>2</sup> See Decision and Order at 3, 4; Director's Exhibit 12. The administrative law judge also considered the third-party statements and testimony of claimant. Since the administrative law judge's finding is based on a reasonable method of calculation, is within his discretion, and is supported by substantial evidence, the administrative law judge's finding regarding the length of the miner's coal mine employment is affirmed. See Justice v. Island Creek Coal Co. and Old Republic Companies, 11 BLR 1-91 (1988).

Claimant next argues that the administrative law judge erred in determining that the medical evidence did not support a finding that the miner's coal mine employment contributed to his pneumoconiosis or that the miner died as a result of pneumoconiosis. In reaching these conclusions, the administrative law judge first determined whether the miner established the existence of pneumoconiosis. Pursuant to 20 C.F.R. §718.202(a)(2), the administrative law judge found that the results of a September 18, 1982 biopsy and its interpretation by Dr. Reams were sufficient to establish that the miner had pneumoconiosis. See Director's Exhibit 8; Decision and Order at 8. The administrative law judge then addressed the issue of whether the miner's pneumoconiosis was substantially related to or aggravated by dust exposure from his coal mine employment. Since the miner lacked 10 years of coal mine employment, the administrative law judge considered the evidence of record pursuant to 20 C.F.R. §718.203(c), and determined that no causal relationship existed thereunder. The administrative law judge stated that none of the examining or treating doctors suggested a relationship between the miner's coal mine employment and his pulmonary impairment. See Decision and Order at 8. The administrative law judge further concluded that the lay testimony of claimant, George Hall, and Michael Duncan was not sufficient to establish the causal relationship between the miner's coal mine employment and his impairment. See Decision and Order at 8, 9. As the administrative law judge properly determined that the medical evidence of record showed no causal relationship between the miner's pneumoconiosis and his coal mine employment, see Director's Exhibits 6, 8, 12, his finding that the lay testimony is insufficient to establish that the miner's pneumoconiosis arose from his coal mine employment is affirmed as rational and supported by substantial evidence. See Cooper v. United States Steel Corp., 7 BLR 1-842 (1985).

Turning to the issue of whether the miner's pneumoconiosis contributed to his death, the administrative law judge considered the medical evidence of record and properly found that none of the doctors who treated claimant opined that he died as a result of pneumoconiosis or that the disease contributed to his death in any way. 20 C.F.R. §718.205; see Decision and Order at 8, 9; Director Exhibits 6, 8, 12; Dillon v. Peabody Coal Co., 11 BLR 1-113 (1988). We therefore affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis, as it is supported by substantial evidence, and contains no reversible error.

Accordingly, the Decision and Order denying benefits is affirmed.

SO ORDERED.

JAMES F. BROWN

Administrative Appeals Judge

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<sup>2</sup>The miner earned \$50 or more in only four of the eight quarters considered by the administrative law judge.

NANCY S. DOLDER  
Administrative Appeals Judge

RENO E. BONFANTI  
Administrative Law Judge