

BRB No. 07-0146 BLA

E.M.)
(Widow of T.M.))
)
Claimant-Petitioner)
)
v.)
)
HARLAN FUEL COMPANY,) DATE ISSUED: 09/25/2007
INCORPORATED)
)
and)
)
GREAT WESTERN RESOURCES)
)
Employer/Carrier-)
Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
) DECISION and ORDER

Party-in-Interest

Appeal of the Decision and Order Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Sidney B. Douglass, Harlan, Kentucky, for claimant.

Jeffrey S. Goldberg (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, 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, the miner's widow, appeals the Decision and Order Denying Benefits (04-BLA-5546) of Administrative Law Judge Pamela Lakes Wood 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). The administrative law judge concluded that employer was the responsible operator and, based upon the stipulation of the parties, found that the miner had at least twenty-eight and one-half years of coal mine employment. Decision and Order at 3; Hearing Transcript at 8-9, 22. Based on the date of filing, the administrative law judge adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718.¹ Decision and Order at 2. Considering the evidence of record, the administrative law judge concluded that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Decision and Order at 13-16. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in failing to find the existence of pneumoconiosis established pursuant to Section 718.202(a)(1), (4), as the administrative law judge failed to give proper weight to the preponderance of the positive x-ray interpretations or to the opinion of the miner's treating physician, Dr. Richard Stoltzfus. Claimant also contends that Dr. Stoltzfus found that the miner's chronic obstructive pulmonary disease, which was due to his coal mine employment, was a contributing cause of his death and hastened his death pursuant to Section 718.205(c). Employer has not filed a response brief. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the administrative law judge's denial of benefits as supported by substantial evidence.

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).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 in a survivor's claim filed on or after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. *See* 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 725.201; *Trumbo v.*

¹ The miner died on January 5, 2002 and claimant filed a survivor's claim, the subject of the instant appeal, on March 22, 2002. A previously filed miner's claim was dismissed on October 9, 1985, by Associate Chief Administrative Law Judge G. Marvin Bober pursuant to the miner's request to withdraw his claim.

Reading Anthracite Co., 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Pneumoconiosis is a “substantially contributing cause” of a miner’s death if it hastens the miner’s death. *See* 20 C.F.R. §718.205(c)(5); *see also Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 1-135 (6th Cir. 1993).²

After consideration of the administrative law judge’s Decision and Order Denying Benefits, the arguments raised on appeal, and the evidence of record, we conclude that the administrative law judge’s decision denying benefits was rational, supported by substantial evidence, and in the accordance with law.³ It is accordingly affirmed.

In finding that the 2005 opinion of Dr. Stoltzfus failed to establish that pneumoconiosis contributed to, or hastened, the miner’s death, the administrative law judge found that while Dr. Stoltzfus had treated the miner for many years, the doctor treated the miner for coronary artery disease, not pneumoconiosis. The administrative law judge also found that Dr. Stoltzfus had not treated the miner during his last few years of life, that Dr. Stoltzfus never diagnosed either clinical or legal pneumoconiosis during the miner’s lifetime, never administered either pulmonary function studies or blood gas studies to the miner, and never made a determination as to whether the miner was disabled from respiratory disease during his lifetime. The administrative law judge, therefore, properly found that even though Dr. Stoltzfus had treated the miner at one point in his life, the doctor “did not have a superior understanding of the [m]iner’s condition.” Decision and Order at 14. The administrative law judge, therefore, properly found that Dr. Stoltzfus’s opinion, that “pneumoconiosis and or coal mine dust exposure” significantly contributed to and/or hastened the miner’s death, was not well-reasoned. Decision and Order at 16; 20 C.F.R. §§718.104(d); 718.205(c); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003)(treating physicians get the deference they deserve based on their power to persuade); *Director, OWCP v. Rowe*, 710

² The miner was last employed in the coal mine industry in Kentucky. Director’s Exhibits 1, 4, 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

³ Because we affirm the administrative law judge’s finding that claimant failed to establish that the miner’s death was due to pneumoconiosis, 20 C.F.R. §718.205(c), we need not address claimant’s arguments regarding the existence of pneumoconiosis, 20 C.F.R. §718.202(a). *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

F.2d 251, 5 BLR 2-99 (6th Cir. 1983).⁴ Therefore, as claimant has failed to establish that the miner's death was due to pneumoconiosis at Section 718.205(c), an essential element of entitlement under Part 718 in a survivor's claim, entitlement to benefits is precluded. *See Trumbo*, 17 BLR at 1-87.

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

⁴ The administrative law judge's findings regarding the opinions of Drs. Dalloul and Burki, on the issue of whether the miner's death was due to pneumoconiosis, *i.e.*, that they found that the miner's death was due to cardiopulmonary arrest and not pneumoconiosis and or coal mine dust exposure, are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).