

BRB No. 99-0692 BLA

RANDY R. REICHERT	)	
(o/b/o of FERNLEY I. REICHERT,	)	
Deceased Widow of MORRIS REICHERT)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Richard A. Seid (Henry L. Solano, 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: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order (1998-BLA-00657) of Administrative Law Judge Ainsworth H. Brown denying benefits on a claim filed

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<sup>1</sup>Claimant is Randy R. Reichert, who is pursuing the claim on behalf of Fernley Reichert, the miner's deceased widow. The miner, Morris Reichert, filed claims for benefits on July 13, 1978 and February 3, 1983 and was awarded benefits by Administrative Law Judge Ralph A. Romano on July 27, 1994. Director's Exhibit 13. The miner died on August 10, 1997 and the miner's widow filed the instant survivor's claim on August 21, 1997. Director's Exhibits 1, 3. The miner's widow

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 found that claimant failed to establish that the miner's death was due to, or hastened by, 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 finding the medical opinion evidence insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c). The Director, Office of Workers' Compensation Programs (the Director), 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 based on a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that death was due to, or hastened by, pneumoconiosis. See 30 U.S.C. §901(a); 20 C.F.R. §§718.1, 718.205, 725.201; *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

Claimant initially contends that the administrative law judge erred in concluding that Dr. Miller's opinion is insufficient to establish death due to pneumoconiosis since Dr. Miller makes a direct reference to the pulmonary effects of pneumoconiosis when discussing the cause of the miner's death. Claimant's Brief at 2. Dr. Miller performed an autopsy and listed the final anatomic diagnoses as disseminated lymphosarcomatosis with extensive lung involvement and mediastinal lymphadenopathy, severe acute interstitial pneumonitis, myocarditis with fibrosis, anthracosis and mild interstitial fibrosis in both lungs consistent with mild coal workers' pneumoconiosis. Director's Exhibit 4. Dr. Miller summarized that the miner died from massive lymphosarcomatosis with destruction of pulmonary

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died on October 25, 1998.

function. *Id.* Dr. Miller further stated that pulmonary function was compromised by pneumonitis which may have been secondary to chemotherapy or a viral or bacterial infection. *Id.* Dr. Miller further opined that it was difficult to estimate the extent of the coal workers' pneumoconiosis because so much of the pulmonary parenchyma had been destroyed by the lymphosarcoma and the pneumonitis. *Id.* He stated that his best estimate was that pneumoconiosis was of a mild severity, although there were a few areas that might better be described as moderate. *Id.* Because Dr. Miller does not directly or inferentially link the miner's pneumoconiosis to his death and because he stated that it was difficult to determine the extent of the miner's pneumoconiosis, the administrative law judge acted within his discretion in finding that Dr. Miller's opinion is insufficient to support a finding that the miner's pneumoconiosis either caused or hastened the miner's death. Decision and Order at 4; *Lango, supra*; *Lukosevicz, supra*; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989).

Claimant next contends that the administrative law judge failed to properly weigh the medical records and death certificate prepared by Dr. Dacosta, who noted the presence of chronic obstructive pulmonary disease secondary to pneumoconiosis in the medical records and included pneumoconiosis as an immediate cause of death on the death certificate. Claimant's Brief at 2. As claimant states, Dr. Dacosta, in a discharge summary, indicated that the miner had a past history that indicated chronic obstructive pulmonary disease secondary to pneumoconiosis. Director's Exhibit 4. Further, the death certificate, which was signed by Dr. Dacosta, lists the cause of death as hypoxemia, acute lymphoblastic leukemia, chronic obstructive pulmonary disease and pneumoconiosis. Director's Exhibit 3. The administrative law judge rationally found Dr. Dacosta's death certificate opinion to be unpersuasive because it lacked any reasoning. Decision and Order at 4; *Lafferty, supra*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

Claimant next contends that the administrative law judge improperly relied exclusively on the opinions of Drs. Naeye and Levinson despite the fact that neither of the physicians examined the miner and that they only reviewed limited medical information concerning the miner. Claimant's Brief at 2. Both Dr. Naeye, who reviewed the autopsy protocol, and Dr. Levinson, who performed a record review, opined that the miner's pneumoconiosis did not cause or hasten the miner's death. Director's Exhibits 6, 15. The administrative law judge acted within his discretion in finding that the opinions of Drs. Naeye and Levinson were well explained and rationally found that their opinions were persuasive on the basis of their credentials.<sup>2</sup>

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<sup>2</sup>Dr. Naeye is Board certified in Anatomic and Clinical Pathology. Director's Exhibit 7. Dr. Levinson is certified in the sub-specialty of Pulmonary Diseases by the American Board of Internal Medicine. Director's Exhibit 15.

Decision and Order at 4; *Lango, supra*; *Lafferty, supra*; *Clark, supra*; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge further properly noted that, because Dr. Dacosta's credentials are not in the record, he was unable to compare Dr. Dacosta's expertise to those possessed by Drs. Naeye and Levinson. Decision and Order at 4. Consequently, because the administrative law judge rationally found that claimant has not provided any persuasive evidence that the miner's death was caused by or hastened by pneumoconiosis, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to, or hastened by, pneumoconiosis pursuant to Section 718.205(c) and the denial of benefits.

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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JAMES F. BROWN  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge