

BRB No. 07-0591 BLA

H.P. (widow of C.P.))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DANTE COAL COMPANY)	DATE ISSUED: 04/30/2008
)	
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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

H.P., Phillippi, West Virginia, *pro se*.

Kathy L. Snyder (Jackson Kelly, P.L.L.C.), Morgantown, West Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order – Denying Benefits (2005-BLA-5275) of Administrative Law Judge Michael P. Lesniak 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, 33 U.S.C. §901 *et seq.* (the Act). This case involves a claim filed on October 21, 2003.¹ Dir. Ex. 5. The administrative law judge

¹Claimant is the widow of the miner, who died on June 25, 2003. Dir. Ex. 16. The miner filed his first claim for benefits on February 13, 1981. No action was taken

credited the miner with 30 years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. Claimant challenges the administrative law judge's finding that the miner's death was not caused or hastened by pneumoconiosis. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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 in a claim filed after January 1, 1982, a 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.² 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A miner's death will be considered to have been due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to

after a request for documents, so the case was closed. The miner filed his second claim for benefits on March 19, 1984; the claim was denied by the administrative law judge, as the miner failed to establish the existence of pneumoconiosis and a totally disabling pulmonary impairment. The miner filed a third claim for benefits on March 19, 1999; the district director twice denied the claim. No further action was taken on the claim. Decision and Order at 2-3; Dir. Exs. 1-3.

²Although employer disputed the existence of pneumoconiosis at the hearing, the administrative law judge found that the autopsy report showed evidence of pneumoconiosis and all the doctors reported the presence of pneumoconiosis in the deceased miner's lungs. Moreover, the administrative law judge stated that employer "acknowledged" in its closing brief the presence of pneumoconiosis. The administrative law judge therefore did not consider the matter disputed and addressed only the issue of whether pneumoconiosis contributed to the miner's death. Decision and Order at 3.

the miner's death.³ 20 C.F.R. §718.205(c)(2), (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); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 505 U.S. 1050 (1993).⁴

The only issue before the Board is whether the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c). The death certificate states that the miner's death was due to cardiopulmonary arrest secondary to respiratory failure, hemoptysis, and a lung mass, probably cancer. Other significant contributing factors were rectal cancer, chronic obstructive pulmonary disease (COPD), depression, and coronary artery disease. Dir. Ex. 16. The autopsy, conducted on June 25, 2003, by Dr. Franyutti, revealed diffuse emphysema, simple coal workers' pneumoconiosis with interstitial pulmonary fibrosis, bronchial epithelial hyperplasia with squamous metaplasia and atypia, necrotic keratinizing squamous cell carcinoma with metastasis to hilar lymph nodes, organizing pneumonitis, and acute pneumonitis. Dir. Ex. 17. Dr. Franyutti testified that the miner's pneumoconiosis was mostly macular and that lung disease was consistent with the cause of death. Emp. Ex. 5. However, because he performed an autopsy of only the miner's lungs, Dr. Franyutti declined to render an opinion on the

³Section 718.205(c), 20 C.F.R. §718.205(c), provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.
- (4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.
- (5) Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death.

⁴The record indicates that the miner's last coal mine employment occurred in West Virginia. Accordingly, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit in this case. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

specific cause of death. *Id.* Drs. Myers and Arcenas, the miner's treating physicians, however, opined that pneumoconiosis contributed to the miner's death.⁵ Dir. Exs. 18, 28.

The administrative law judge found that the reports of Drs. Myers and Arcenas are insufficient to establish that the miner's death was due to pneumoconiosis. Specifically, although acknowledging their status as the miner's treating physicians, the administrative law judge found that the opinions of Drs. Myers and Arcenas are not well-reasoned or well-documented and therefore are deserving of little weight. Decision and Order at 14; 20 C.F.R. §718.104(d). The administrative law judge found that Dr. Myers, whose credentials are not in the record, relied solely on the autopsy report to find there was extensive pneumoconiosis, despite the fact that Dr. Franyutti stated that the miner had mostly macular pneumoconiosis that would not have caused much lung dysfunction. Although the administrative law judge acknowledged that Dr. Arcenas is Board-certified in Internal Medicine, he noted that Dr. Arcenas stated that he would defer to a pathologist or pulmonary specialist regarding the cause of death. Additionally, the administrative law judge noted that neither Dr. Myers nor Dr. Arcenas considered the miner's extensive smoking history,⁶ his smoking-related diseases, or their effect on the miner's lung function. He also stated that Dr. Myers failed to adequately explain his reasons for concluding that pneumoconiosis contributed to the miner's death. Decision and Order at 13-14. Further, the administrative law judge found that the opinion of Dr. Franyutti, who does not have Board certification but has practiced in pathology and has been a medical examiner for nearly 30 years, deserves little weight, as he admitted he could not recall whether he reviewed the miner's medical history before performing the autopsy, and he did not know the miner's smoking history or length of coal mine employment. As he declined to form an opinion as to the cause of death other than to say it was consistent

⁵Dr. Myers, the miner's treating physician from 1974 until December 2002, and Dr. Arcenas, his treating physician from December 2002 until his death in June 2003, opined that pneumoconiosis played a role in the miner's death. Specifically, Dr. Myers stated that the autopsy showed extensive pneumoconiosis with widespread fibrotic scarring and that these changes led to breathing problems long before the cancer developed. Thus, he concluded that pneumoconiosis was a contributing factor in the miner's death. Dir. Ex. 18. Dr. Arcenas, who signed the death certificate, agreed with the diagnosis of extensive pneumoconiosis and opined that this disease contributed to the miner's respiratory compromise, though he stated that complications from lung cancer were the immediate cause of death. Dr. Arcenas stated that he would defer to specialists in assessing the miner's pulmonary condition as well any role pneumoconiosis played in the miner's death. Dir. Ex. 28.

⁶ The administrative law judge's finding that the miner had a 60 to 100 pack-year cigarette smoking history is supported by substantial evidence. Emp. Ex. 7.

with lung disease, the administrative law judge found that Dr. Franyutti's opinion is insufficient to establish that the miner's death was due to pneumoconiosis. *Id.* at 12.

The administrative law judge's reasons for rejecting claimant's evidence are rational and supported by substantial evidence. As the administrative law judge found, Dr. Franyutti did not render a specific opinion on the cause of the miner's death, and thus his report is insufficient to meet claimant's burden of establishing that pneumoconiosis caused or hastened the miner's death. *United States Steel Mining Co. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999). Additionally, Dr. Arcenas stated he would defer to a pulmonary or pathology specialist on the issue of the extent of the miner's pneumoconiosis and any role it may have played in the miner's death. Thus, the administrative law judge permissibly found that his opinion is insufficient to establish that the miner's death was due to pneumoconiosis. *Id.* With regard to Dr. Myers's opinion, it was rational for the administrative law judge to find it was not well-reasoned, as Dr. Myers's statement that pneumoconiosis contributed to the miner's death was a conclusory statement that was not adequately explained in view of the miner's extensive smoking history and other conditions. Decision and Order at 14. Section 718.104(d)(5) provides that the weight given to the opinion of a treating physician shall "be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5); *see generally Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3^d Cir. 1997). The Board is not empowered to reweigh the evidence or to substitute its inferences for those of the administrative law judge. *See generally Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997). The administrative law judge gave valid reasons for rejecting the opinions of the treating physicians. *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). As claimant bears the burden of establishing that pneumoconiosis caused or hastened the miner's death, 20 C.F.R. §718.205(c), and as the administrative law judge rationally rejected her evidence such that she has not satisfied her burden, we affirm the administrative law judge's denial of benefits. *See generally Jarrell*, 187 F.3d 384, 21 BLR 2-639.

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