

BRB No. 99-1094 BLA

LOUISE TOTH)	
(Widow of STEVE TOTH))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
U. S. STEEL MINING COMPANY)	
)	DATE ISSUED:
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 of John C. Holmes, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle and Rundle, L. C.), Pineville, West Virginia, for claimant.

Howard G. Salisbury, Jr. (Kay, Casto & Chaney, PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (1999-BLA-0404) of Administrative Law

¹Claimant is Louise Toth, the miner's widow. The miner, Steve Toth, filed a claim for benefits on July 25, 1986 and was denied benefits in a Decision and Order issued by Administrative Law Judge Julius A. Johnson on September 19, 1989. Director's Exhibit 19. The miner died on January 21, 1998 and claimant filed the instant survivor's claim for

Judge John C. Holmes (hereinafter administrative law judge) denying benefits on claims 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 adopted Administrative Law Judge Julius A. Johnson's findings that the miner established thirty-one and one-half years of qualifying coal mine employment and the existence of pneumoconiosis, but failed to establish total respiratory disability. The administrative law judge then found that claimant failed to establish that the miner's death was due to 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 weighing the medical opinion evidence pursuant to Section 718.205(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, responds, declining to submit a response brief on appeal.

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 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; *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir., 1992); *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 contends that the administrative law judge erred in weighing the opinions of Drs. Qazi and Bush pursuant to Section 718.205(c). The record contains an autopsy report which was submitted by Dr. Qazi, but was dictated by Dr. Pullins, which diagnosed simple coal workers' pneumoconiosis. Director's Exhibit 8. The death certificate, signed by Dr. Qazi, listed the cause of the miner's death as cardiopulmonary arrest due to severe chronic obstructive pulmonary disease, interstitial pneumoconiosis, congestive heart failure and ischemic heart disease. Director's Exhibit 7. Dr. Qazi also submitted a one page letter dated September 19, 1998 in which stated that the miner had severe COPD secondary to pneumoconiosis and that his "death was directly related to his lung disease, secondary to his

benefits on March 23, 1998. Director's Exhibits 1, 7.

coal workers' pneumoconiosis and interstitial pneumoconiosis." Director's Exhibit 12. Although Dr. Qazi states that the miner's death was directly related to his lung disease, he failed to provide any reasoned medical judgment that pneumoconiosis contributed in any way to the miner's death. *See Sparks, supra*. Consequently, the administrative law judge acted within his discretion in assigning Dr. Qazi's opinion "very little weight" because his opinion that pneumoconiosis contributed to the miner's death is conclusory and not well reasoned. Decision and Order at 4; *Sparks, supra*; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

Dr. Bush reviewed the evidence of record and opined that the changes in the miner's lung sections "may be related to bronchopneumonia, hypoxia from cardiac failure or many other causes which are relatively acute and have no relationship to past occupational exposure," that "the minimal degree of simple coal workers' pneumoconiosis was too limited in extent to have caused or contributed to the miner's death" and that the "minimal amount of occupational pulmonary disease did not hasten" the miner's death. Employer's Exhibit 1. After reviewing Dr. Bush's opinion and the evidence upon which he relied in making his findings regarding the cause of the miner's death, the administrative law judge reasonable found that Dr. Bush's opinion is well-reasoned and well-documented because he provided precise explanations of his diagnoses and because the objective evidence of record supports his diagnoses.² Decision and Order at 3-4; Employer's Exhibit1; *Sparks, supra*; *Lafferty, supra*; *Clark, supra*. Inasmuch as the administrative law judge's findings are supported by substantial evidence, we affirm his determination that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205 and the denial of benefits on the survivor's claim.

²It is obvious from the administrative law judge's findings that he made a mistake in writing that Dr. Ranavaya's report supports the "conclusion of Dr. Bruce" and that "Dr. Bruce has additionally uttered the 'magic words' that the miner would have died at the same time and place if he had never entered a coal mine...." Decision and Order at 4. Clearly, the administrative law judge's reference to Dr. Bruce is a reference to Dr. Bush's report, inasmuch as the record does not contain a report from Dr. Bruce but the language attributed to Dr. Bruce is found in the report of Dr. Bush.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge