

BRB No. 02-0303 BLA

MONA V. CLINE)	
(Widow of JOHNIE FLOYD CLINE))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ISLAND CREEK COAL 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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

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

Mary Rich Maloy (Jackson & Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (00-BLA-0938) of Administrative Law Judge Daniel L. Leland 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*

¹Claimant is the surviving spouse of the deceased miner who died on November 6, 1999. Director's Exhibit 13.

seq. (the Act).² The instant case involves a survivor's claim filed on January 4, 2000.³

²The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³On January 30, 1970, the miner applied to the Social Security Administration (SSA) for any benefits due him under the Federal Coal Mine Health and Safety Act. Director's Exhibit 29. On May 9, 1970, the miner informed the SSA that he did not wish to follow up on his "Federal Black Lung Protective Statement." *Id.* On September 15, 1970, the SSA determined that the miner was not entitled to benefits because he was still working. *Id.*

The miner subsequently filed a claim with the SSA on April 2, 1973. *Id.* The SSA denied the claim on September 7, 1973. *Id.* The miner filed a claim with the Department of Labor (DOL) on May 30, 1974. *Id.* On September 30, 1974, the DOL informed the miner that it could take no action on his claim until the SSA made a determination on the claim that

The administrative law judge found that the evidence was 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. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board must affirm the findings 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).

the miner filed with them. *Id.* In a Hearing Decision dated December 26, 1974, Administrative Law Judge James P. Lynch denied benefits on the miner's SSA claims. *Id.* By Decision and Order dated November 22, 1985, Administrative Law Judge R. S. Heyer denied the miner's 1974 DOL claim. *Id.* There is no evidence that the miner took any further action in regard to his 1970, 1973 and 1974 claims.

The miner filed another claim for benefits on January 6, 1992. Director's Exhibit 30. The district director denied benefits on April 27, 1992. *Id.* There is no evidence that the miner took any further action in regard to his 1992 claim.

Because the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁴ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a

⁴Section 718.205(c) provides that:

- (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.

20 C.F.R. §718.205(c).

substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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); *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718. Dr. Racadag, the autopsy prosector, opined that the miner’s death was “most probably” caused by “respiratory failure due to pneumothorax associated with severe nodular simple coal workers’ pneumoconiosis, bullous and panacinar emphysema and acute bronchopneumonia.”⁵ Director’s Exhibit 14. The administrative law judge, however, properly found that Dr. Racadag’s opinion was outweighed by the contrary opinions of three reviewing pathologists, Drs. Oesterling, Bush and Tomashefski, based upon their superior qualifications.⁶ *See Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Decision and Order at 6; Director’s Exhibit 13; Employer’s Exhibits 6, 8, 13, 16. The administrative law judge found that the opinions of Drs. Oesterling, Bush, and Tomashefski were “thorough and well reasoned as they rationally concluded that severe emphysema from cigarette smoking was the cause of the miner’s death and that his pneumoconiosis affected too small a portion of his lungs to have played any part in his death.”⁷ Decision and Order at 6.

⁵Dr. Racadag also completed the miner’s death certificate on November 7, 1999. Director’s Exhibit 13. Dr. Racadag attributed the miner’s death to a pneumothorax due to bullous emphysema and coal workers’ pneumoconiosis. *Id.*

Although Dr. Racadag performed the miner’s autopsy, the administrative law judge noted that Dr. Racadag did not indicate that his opinions were based upon his gross examination. Decision and Order at 6. The administrative law judge, therefore, held that Dr. Racadag’s status as the autopsy prosector did not entitle his opinion to any additional weight. *Id.*

⁶Drs. Oesterling, Bush and Tomashefski are Board-certified in Anatomical and Clinical Pathology. Employer’s Exhibits 6, 8, 13. Dr. Racadag’s qualifications are not found in the record.

⁷The record contains the opinions of two other reviewing pathologists, Drs. Hansbarger and Naeye. *See* Employer’s Exhibits 2, 4, 15. The administrative law judge found that Dr. Hansbarger provided no basis for his opinion that the miner’s pneumoconiosis was too mild to have contributed to his death and that Dr. Naeye did not address the cause of the miner’s death. Decision and Order at 6 n.1. While Dr. Naeye did not address the cause

Although Dr. Ranavaya also indicated that the miner's pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, he provided no explanation for his finding.⁸ Employer's Exhibit 15. The administrative law judge, therefore, properly found that Dr. Ranavaya's opinion was not sufficiently reasoned. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 6.

of the miner's death in his September 9, 2000 report, Dr. Naeye prepared a supplemental report dated August 27, 2001 wherein he opined that "the pulmonary impairments that were responsible for the disability and contributed to the death of [the miner] were the result of his many years of cigarette smoking and not his mild coal workers' pneumoconiosis." Employer's Exhibit 15.

⁸Dr. Ranavaya completed a questionnaire on February 1, 2001. In response to a question as to whether pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, Dr. Ranavaya merely answered: "Yes." Director's Exhibit 15.

Dr. Rasmussen is the only other physician of record to attribute the miner's death to his coal dust exposure.⁹ Claimant's Exhibit 1. The administrative law judge accorded "little weight" to Dr. Rasmussen's opinion because he found that it was "extremely speculative." Decision and Order at 6. The administrative law judge found that Dr. Rasmussen offered no basis for attributing the miner's death to coal mine employment other than a reference to medical studies which the doctor had deemed inadequate. *Id.* Although Dr. Rasmussen noted the existence of multiple studies "associating coal mine dust exposure with the development of centriacinar and in some cases panacinar emphysema," Dr. Rasmussen acknowledged that there were "multiple inadequacies in many of [the] studies." Claimant's Exhibit 1. Other than citing medical studies, Dr. Rasmussen provided no basis for linking the miner's emphysema to pneumoconiosis or coal dust exposure. *Id.* By contrast, the administrative law judge found that the contrary opinions of the reviewing pathologists, Drs. Oesterling, Bush and Tomashefski, were well reasoned and entitled to significant weight. Decision and Order at 6; *Lucostic, supra*. The administrative law judge further found that the opinions of Drs. Oesterling, Bush and Tomashefski were supported by the opinions of three pulmonary specialists, Drs. Castle,¹⁰ Morgan¹¹ and Zaldivar.¹² Decision and Order at 6-7; Employer's Exhibits

⁹After reviewing the medical evidence, Dr. Rasmussen prepared an August 7, 2001 report wherein he stated that:

Based on the fact that none of the experts can clearly exclude coal mine dust exposure as a cause of [the miner's] disabling and ultimately fatal chronic lung disease and because epidemiologic studies clearly demonstrate that coal mine dust exposure causes excessive death due to chronic obstructive disease, (i.e. emphysema and bronchitis) I must conclude to a reasonable degree of medical certainty that [the miner's] death was caused in significant part by his coalworkers' pneumoconiosis and its associated emphysema.

Claimant's Exhibit 1.

¹⁰Dr. Castle reviewed the medical evidence of record. In a report dated January 10, 2001, Dr. Castle opined that the miner's death was not caused by, contributed to, or hastened in any way, by his coal workers' pneumoconiosis. Employer's Exhibit 11. Dr. Castle further opined that the miner suffered from tobacco smoke induced chronic obstructive pulmonary disease. *Id.* Dr. Castle subsequently reviewed Dr. Rasmussen's report. In a supplemental report dated September 7, 2001, Dr. Castle stated that Dr. Rasmussen offered no additional objective information to cause him to alter any of his previous opinions. Employer's Exhibit 16. During a September 12, 2001 deposition, Dr. Castle reiterated his opinion that neither the miner's coal workers' pneumoconiosis nor his coal mine dust exposure played any role in

contributing to or hastening his death. Employer's Exhibit 17 at 14, 21. Dr. Castle opined that the miner would have died at the same time regardless of his occupational history. *Id.* at 18.

¹¹Dr. Morgan reviewed the medical evidence of record. In a report dated February 6, 2001, Dr. Morgan opined that the miner's simple coal workers' pneumoconiosis did not affect his lung function or contribute to his death. Employer's Exhibit 12. Dr. Morgan attributed the miner's severe respiratory impairment to his cigarette smoke induced chronic obstructive pulmonary disease. *Id.* Dr. Morgan subsequently reviewed Dr. Rasmussen's report. In a supplemental report dated August 31, 2001, Dr. Morgan indicated that he saw "no reason to change [his] prior opinion as described in his report of February 6, 2001." Employer's Exhibit 16.

¹²Dr. Zaldivar reviewed the medical evidence of record. In a report dated February 10, 2001, Dr. Zaldivar opined that the miner's death was due to emphysema attributable to his smoking history. Employer's Exhibit 12. Dr. Zaldivar further opined that the miner's

11, 12, 14, 16, 17. *Id.* Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).¹³

coal workers' pneumoconiosis did not play any role in his death. *Id.* In a supplemental report dated August 29, 2001, Dr. Zaldivar opined that his review of Dr. Rasmussen's report had not caused him to change any of his opinions set out in his February 10, 2001 report. Employer's Exhibit 14.

¹³Because there is no evidence of complicated pneumoconiosis in the record, the administrative law judge properly found that claimant is precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. See 20 C.F.R. §718.205(c)(3); Decision and Order at 7 n.2.

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

REGINA C. McGRANERY
Administrative Appeals Judge