

BRB No. 04-0258 BLA

DELLA LAYNE)	
(Widow of EARL LAYNE))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
OLD BEN COAL COMPANY)	DATE ISSUED: 12/07/2004
)	
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 – Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Della Layne, Freeburn, Kentucky, *pro se*.¹

Lois A. Kitts (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

¹ Ms. Susie Davis, President of the Kentucky Black Lung Coalminers & Widows Association, requested on behalf of claimant that the Board review the administrative law judge's decision, but is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

Claimant appeals,² without the assistance of counsel, the Decision and Order – Denial of Benefits (03-BLA-0044) of Administrative Law Judge Thomas F. Phalen, Jr. on a request for modification of the denial of 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).³ The administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718 and credited the parties’ stipulation that the miner worked in qualifying coal mine employment for at least twenty-six years. The administrative law judge found that claimant established that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and therefore, established a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000). Next, the administrative law judge found that claimant established that the miner’s pneumoconiosis arose out of coal mine employment under 20 C.F.R. §718.203(b), but failed to establish that the miner’s pneumoconiosis substantially contributed to his death under 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge’s denial of benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers’ Compensation Programs, as party-in-interest, has not filed a brief in this

² Claimant, Della Layne, is the widow of Earl Layne, the miner, who died on October 7, 2000. Director’s Exhibit 9. The miner filed his first application for benefits on June 29, 1973, which was finally denied on July 12, 1979. Director’s Exhibit 1. The miner took no further action on this claim, and subsequently, filed a duplicate application for benefits on March 28, 1983, which was finally denied in a Decision and Order rendered by Administrative Law Judge Charles Campbell on August 13, 1990. The Benefits Review Board affirmed the denial of benefits and subsequently, denied the miner’s request for reconsideration, *Layne v. Old Ben Coal Co.*, BRB No. 90-2280 BLA (May 20, 1992) (unpub.); *Layne v. Old Ben Coal Co.*, BRB No. 90-2280 BLA (Aug. 10, 1995) (Order) (unpub.); Director’s Exhibit 1.

After the miner’s death on October 7, 2000, claimant, the miner’s widow, filed a survivor’s claim for benefits on January 10, 2001. Director’s Exhibit 2. After the district director denied the claim on April 27, 2001, claimant submitted an amended death certificate, which the district director construed as a request for modification pursuant to 20 C.F.R. §725.310 (2000). Director’s Exhibits 18, 19. Thereafter, the district director denied claimant’s request for modification. Claimant thereafter requested a formal hearing, which was held before the administrative law judge on April 16, 2002.

³ The 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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

appeal.⁴

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial evidence, contains no reversible error and must, therefore, be affirmed. Relevant to Section 718.205(c), the administrative law judge found that the medical opinions of record failed to establish that pneumoconiosis caused, substantially contributed to, or hastened the miner's death. A review of the record reveals that there were seven physicians' opinions, as well as two death certificates completed by the Pikeville County Deputy Coroner, that addressed whether pneumoconiosis hastened the miner's death. On October 13, 2000, Mr. Earnest Casebolt, Pikeville County Deputy Coroner, signed the original death certificate pronouncing the miner's death on October 7, 2000 and listing the immediate cause of death as "colon cancer due to or as a consequence of metastasize [sic] to bone." Director's Exhibit 9. The death certificate further indicated that an autopsy was performed but that the findings were not available prior to its completion. On March 28, 2002, Mr. Casebolt completed an amended death certificate, stating that the immediate causes of the miner's death were bronchopneumonia, anthracosilicosis, colon cancer, and metastasis to the bone and listing other significant conditions including pulmonary congestion, edema, severe fibrosis, and emphysematous changes. The amended death certificate, like the original certificate, indicated that an autopsy was performed but that the findings were not available prior to its completion. Director's Exhibits 18, 30. Dr. Dennis, the autopsy prosector, performed the autopsy and opined that the miner died a pulmonary death with bronchopneumonia superimposed upon a weakened lung by the presence of anthracosilicosis, pulmonary fibrosis, nodules of pulmonary fibrosis, pulmonary congestion and edema along with severe fibrosis and emphysematous changes. Director's

⁴ Ms. Lois A. Kitts, employer's counsel, has filed a letter indicating that Baird & Baird, P.S.C. is withdrawing as counsel for employer, Old Ben Coal Company. The Director, Office of Workers' Compensation Programs (the Director), responds and does not object to Ms. Kitts's withdrawal. The Director requests, however, that the Board retain Old Ben Coal Company as a party in this case. Employer's counsel's request to withdraw is granted and the Director's request that Old Ben Coal Company be retained as a party is also granted.

Exhibit 34; Employer's Exhibit 7. Dr. Puram noted that he treated the miner for malignant pleural effusions secondary to adenocarcinoma of the lung and stated that the miner had chronic obstructive pulmonary disease secondary to coal workers' pneumoconiosis and he died of respiratory failure. Director's Exhibit 14. To the contrary, however, based on their reviews of the medical evidence of record, Drs. Naeye, Oesterling, Renn, Rosenberg, and Tuteur, opined that the miner's death was not caused by, contributed to, or hastened in any way by the underlying, simple coal workers' pneumoconiosis that was present, but rather was due to metastatic colon cancer and complications thereof. Director's Exhibit 16; Employer's Exhibits 1-3, 8, 11-14.

The administrative law judge's determination that claimant failed to establish that pneumoconiosis substantially contributed to the miner's demise is rational, contains no reversible error, and is supported by substantial evidence. The administrative law judge noted that Deputy Coroner Casebolt did not review the autopsy findings before he issued the initial death certificate and, upon amending the death certificate to include findings similar to those rendered by the autopsy prosector, did not amend the death certificate to indicate that he reviewed the autopsy findings. Decision and Order at 19. The administrative law judge properly found that the record did not contain evidence to demonstrate that Deputy Coroner Casebolt possessed any relevant qualifications, personal knowledge of the miner from which to assess the cause of death, or any relevant information concerning the miner's physical condition. Decision and Order at 18-19. Consequently, the administrative law judge permissibly found that the amended death certificate was less probative on the issue of death due to pneumoconiosis pursuant to Section 718.205(c). *See Addison v. Director*, OWCP, 11 BLR 1-68, 1-70 (1988); *Copley v. Olga Coal Co.*, 6 BLR 1-181, 1-184 (1983); *see also Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-263 (4th Cir. 2000) (bald conclusion that pneumoconiosis contributed to miner's death without some reasoning is insufficient to establish that pneumoconiosis hastened death); Decision and Order at 19. Similarly, the administrative law judge properly found that Dr. Puram's opinion was insufficient to establish that pneumoconiosis contributed to the miner's death because Dr. Puram did not indicate that the etiology of the miner's respiratory failure that contributed to his death was a result of coal workers' pneumoconiosis. *See Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v. Director*, OWCP, 11 BLR 1-85 (1988).

Further, the administrative law judge, within a rational exercise of his discretion, found that the opinions of Drs. Naeye, Oesterling, Renn, Rosenberg, and Tuteur, who opined that the miner's death was due to metastatic cancer of the colon and lung and the resulting complications, were entitled to determinative weight. Specifically, the administrative law judge found that Drs. Naeye and Oesterling, who are Board-certified in clinical and anatomical pathology, and Drs. Renn, Rosenberg, and Tuteur, who are Board-certified in pulmonary disease, *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988), set forth the clinical and pathological findings and observations underlying their opinions, particularly the

objective evidence administered prior to the miner's death demonstrating the absence of any pulmonary impairment due to pneumoconiosis, provided an adequate rationale to support their conclusions, and therefore, rendered reasoned and documented opinions. See *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-32 (4th Cir. 1997); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U. S. Steel Corp.*, 8 BLR 1-46 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984); Decision and Order at 19. Thus, because the administrative law judge's analysis constitutes a proper evaluation of the medical evidence, we affirm his determination that the credible evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis at Section 718.205(c). See *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993); *Dillon*, 11 BLR at 1-113; *Neeley*, 11 BLR at 1-85.

Accordingly, the Decision and Order – Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge