

BRB No. 09-0381 BLA

NILA M. HATFIELD)	
(Widow of EZRA HATFIELD))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ENERGY DEVELOPMENT)	DATE ISSUED: 12/14/2009
CORPORATION/RUHRKOHL TRADING)	
CORPORATION)	
)	
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 on Remand - Denying Benefits of Stephen L. Purcell, Administrative Law Judge, United States Department of Labor.

Leonard J. Stayton, Inez, Kentucky, for claimant.

Kevin J. Cimino (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order on Remand - Denying Benefits (2004-BLA-05340) of Administrative Law Judge Stephen L. Purcell rendered on a survivor's

¹ Claimant is the widow of the miner, Ezra Hatfield, who died on August 18, 2001. Claimant filed her claim for survivor's benefits on October 18, 2001. Director's Exhibit 6.

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.* This is the second time this case has been before the Board. In his first Decision and Order, the administrative law judge awarded benefits, finding that coal workers' pneumoconiosis was established at 20 C.F.R. §718.202(a)(2) and (4), based on autopsy and medical opinion evidence. The administrative law judge also found that the evidence established that the miner's death was caused by coal workers' pneumoconiosis at 20 C.F.R. §718.205(c). Employer appealed, arguing that the administrative law judge erred in awarding benefits because he erred in finding that coal workers' pneumoconiosis caused the miner's death. The Board vacated the award of benefits, agreeing with employer's contentions. The Board remanded the case, instructing the administrative law judge to provide the bases for his finding that the opinions of Drs. McDevitt, Perper and Racadag, who found that coal workers' pneumoconiosis caused death, were more credible than the contrary opinions of Drs. Bush and Rosenberg. *Hatfield v. Energy Development Corp.*, BRB No. 06-0827 BLA (July 16, 2007) (unpub.). On remand, the administrative law judge rejected the opinions of Drs. McDevitt, Perper and Racadag as unreasoned and, instead, credited the opinions of Drs. Bush and Rosenberg. On remand, therefore, the administrative law judge found that claimant failed to establish that the miner's coal workers' pneumoconiosis was a cause of his death at Section 718.205(c). Benefits were, accordingly, denied.

On appeal, claimant asserts that the administrative law judge erred in discrediting the opinions of Drs. McDevitt, Perper, and Racadag, who found that the miner's death was caused by coal workers' pneumoconiosis. Claimant asserts that the opinion of Dr. McDevitt should be entitled to deference because he was the miner's treating physician. Further, claimant contends that both the opinions of Drs. McDevitt and Perper point to the deteriorating pulmonary condition of the miner over several years before other medical conditions, such as coronary artery disease and dementia, developed, and the miner died. Further, claimant asserts that the opinion of Dr. Racadag should be credited because he was the autopsy prosector, proffered a reasoned opinion, and was Board-certified in pathology. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, is not participating in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.² 33 U.S.C. §921(b)(3), as incorporated by 30

² This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner was employed in the coal mining industry in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor’s benefits pursuant to 20 C.F.R. §718.205(c), 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. *See* 20 C.F.R. §§718.202; 718.203; 718.205. Failure to establish any one of these elements precludes entitlement. *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993). For survivor’s claims filed on or after January 1, 1982, the cause of death will be considered to be due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner’s death, if pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death, if the miner’s death was caused by complications of pneumoconiosis, or if the presumption relating to complicated pneumoconiosis at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of 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, 979-980, 16 BLR 2-90, 2-93 (4th Cir. 1992).

After consideration of the arguments on appeal, the administrative law judge’s decision and the evidence of record,³ we conclude that the administrative law judge’s

³ The relevant medical evidence addressing the cause of the miner’s death includes the miner’s death certificate, listing chronic obstructive pulmonary disease as the immediate cause of death, with cerebrovascular disease, coronary artery disease, and chronic renal failure listed as underlying causes. Director’s Exhibit 15. The discharge diagnosis from the miner’s final hospitalization prior to death, which includes diagnoses of: coronary disease; transient ischemic attack, multi-infarct dementia, and conditions unrelated to coal mine dust exposure. Director’s Exhibit 17.

Dr. Bush diagnosed mild simple coal workers’ pneumoconiosis and a mild respiratory impairment that was not due to coal workers’ pneumoconiosis. Dr. Bush noted that autopsy findings did not indicate a totally disabling respiratory impairment or that pneumoconiosis hastened the miner’s death. Rather, he opined that the miner’s death was due to pulmonary problems related to neurologic compromise; “undoubtedly his dementia led to aspiration.” Director’s Exhibits 5, 6.

Dr. Rosenberg opined that the miner’s coal workers’ pneumoconiosis was not diagnosable while the miner was alive, and that neither coal workers’ pneumoconiosis nor emphysema caused or hastened death. Employer’s Exhibit 7. He further found that the miner had a minimal degree of coal workers’ pneumoconiosis by autopsy, and “altered mental status due to multiinfarct dementia [that] probably led to aspiration resulting in extensive pneumonia.” Employer’s Exhibit 3.

decision denying benefits is rational, supported by substantial evidence, and in accordance with applicable law. It is, therefore, affirmed.

In finding that claimant failed to establish that the miner's death was caused by pneumoconiosis at Section 718.205(c), the administrative law judge noted that the miner's death certificate, while listing chronic obstructive pulmonary disease (COPD)⁴ as a cause of death, did not mention pneumoconiosis. Likewise, the administrative law judge noted that while some of the treatment records listed COPD, they did not mention pneumoconiosis. The administrative law judge further noted that the discharge diagnosis from the miner's final hospitalization prior to his death did not list any pulmonary condition, noting instead coronary artery disease, transient ischemic attack, multi-infarct

Dr. Racadag, the autopsy prosector, reported acute lobar and bronchopneumonia bilaterally, simple coal workers' pneumoconiosis with macular and micronodular lesions and severe pleural adhesions. Dr. Racadag opined that the above conditions contributed to the miner's illness and subsequent demise. Director's Exhibit 16.

Dr. McDevitt, who treated the miner at the end of his life, having taken over the practice of the miner's previous treating physician, noted that the miner had multiple pulmonary problems and infections over his lifetime, and severe respiratory problems toward the end of his life, requiring oxygen. He opined that chronic obstructive pulmonary disease and coal workers' pneumoconiosis contributed to the miner's rapid deterioration and his subsequent death from bronchopneumonia. Claimant's Exhibit 1.

After reviewing autopsy slides and medical records, Dr. Perper opined that the evidence showed significant and substantial macules and micronodules of coal workers' pneumoconiosis causally related to emphysema, which substantially caused death by hastening it both directly and indirectly through complicating bronchopneumonia. Dr. Perper criticized employer's experts for minimizing the miner's coal workers' pneumoconiosis as too mild to be diagnosed during his lifetime noting that those experts were wrong. Dr. Perper noted that the 1 x 2 centimeter opacity in the miner's lung that was described as cancer or granuloma while the miner was alive, was subsequently identified on autopsy as neither cancer or granuloma, but as evidence of coal workers' pneumoconiosis. Dr. Perper noted that Dr. Rosenberg still maintained that the opacity was a granuloma, ignoring the autopsy findings. Dr. Perper also criticized Dr. Bush for failing to mention pulmonary function study results that demonstrated both restrictive and obstructive defects while the miner was alive. Claimant's Exhibit 2.

⁴ The cause of the chronic obstructive pulmonary disease is not given. Director's Exhibit 15.

dementia and other conditions unrelated to coal mine dust exposure. Director's Exhibit 17.

Turning to the opinion of Dr. McDevitt, who found that pneumoconiosis contributed to the miner's illness and death, the administrative law judge noted that Dr. McDevitt saw the miner only twice in his office during the last year and one-half of the miner's life and treated him only for bronchitis. The administrative law judge concluded, therefore, that Dr. McDevitt's opinion was not entitled to greater weight as a treating physician at 20 C.F.R. §718.104(d). The administrative law judge also noted that Dr. McDevitt's opinion was not well-reasoned because he merely repeated findings made on autopsy, but failed to explain how his opinion was supported by the miner's underlying medical data. Regarding Dr. Perper's opinion, attributing the miner's death to pneumoconiosis, the administrative law judge rejected it as not well-reasoned because Dr. Perper linked the miner's death to his pneumoconiosis, without any explanation or discussion of evidence that supported such a linkage. Additionally, the administrative law judge rejected the opinion of Dr. Racadag, that the miner's coal workers' pneumoconiosis contributed to his illness and death, because Dr. Racadag failed to explain how his finding of coal workers' pneumoconiosis on autopsy supported his opinion that the coal workers' pneumoconiosis contributed to death.

Instead, the administrative law judge credited the opinions of Drs. Rosenberg and Bush, who found that the miner's coal workers' pneumoconiosis played no role in his death. The administrative law judge noted that both physicians' opinions were well-reasoned because they were supported by x-ray, pulmonary function study and blood gas study evidence compiled during the miner's lifetime, which was normal or did not indicate any significant degree of coal workers' pneumoconiosis. The administrative law judge further noted that both physicians' credentials⁵ made them well-qualified to render opinions on the issue. In summary, the administrative law judge concluded that while the medical evidence established the presence of coal workers' pneumoconiosis, it failed to establish that the miner's coal workers' pneumoconiosis caused his death at Section 718.205(c).

First, contrary to claimant's contention, the administrative law judge did not err when he refused to accord greater weight to the opinion of Dr. McDevitt because he was the miner's treating physician. Despite claimant's assertion that Dr. McDevitt frequently

⁵ The administrative law judge noted: Dr. Rosenberg was Board-certified in internal medicine, pulmonary disease and occupational medicine; Drs. Bush, Perper, and Racadag were Board-certified in anatomic and clinical pathology; and Dr. McDevitt was an osteopath and the Medical Director of family practice at the Varney Medical Center. Decision and Order on Remand at 5-9.

saw the miner in the miner's home, Claimant's Brief at 12; Hearing Transcript at 38, claimant has presented no evidence as to the number of times Dr. McDevitt saw the miner, the duration of his treatment of the miner, the extent of his treatment of the miner, or the relationship he had with the miner. The administrative law judge, therefore, rationally determined that Dr. McDevitt's opinion was not entitled to greater weight based on his status as the miner's treating physician. *See* 20 C.F.R. §718.104(d)(1)-(4).

Additionally, contrary to claimant's assertion, the administrative law judge did not err in rejecting Dr. McDevitt's opinion on the ground that it was not supported by objective evidence. The administrative law judge noted that Dr. McDevitt reviewed the miner's treatment records, which included the reports of x-rays, CT scans, examinations, and objective testing, but permissibly rejected the opinion as unreasoned because Dr. McDevitt did not explain how this data supported a finding that the miner's pneumoconiosis contributed to his death. *See* 20 C.F.R. §718.104(d)(5); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Fuller v. Gibraltar Corp.*, 6 BLR 1-1291 (1984); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983). Accordingly, we affirm the administrative law judge's finding that Dr. McDevitt's opinion did not establish death due to pneumoconiosis at Section 718.205(c).

In addition, contrary to claimant's assertion, the administrative law judge did not err in rejecting the opinion of Dr. Perper, as unreasoned. Claimant asserts that Dr. Perper's opinion should be credited because Dr. Perper's findings of hypoxemia and respiratory impairment prior to the miner's death were supported by the various blood gas studies and examinations conducted during the miner's lifetime, as was his finding that the miner's pneumoconiosis contributed to his death. As the administrative law judge found, however, Dr. Perper's opinion was not well-reasoned because Dr. Perper did not explain how the medical data compiled during the miner's lifetime supported his conclusion that pneumoconiosis contributed to his death. *See Fuller*, 6 BLR at 1-1294; *Duke*, 6 BLR at 1-675. Accordingly, we affirm the administrative law judge's finding that Dr. Perper's opinion is insufficient to establish death due to pneumoconiosis at Section 718.205(c).

Further, contrary to claimant's assertion, the administrative law judge permissibly rejected Dr. Racadag's opinion that the miner's coal workers' pneumoconiosis contributed to his death, even though he was the autopsy prosector, because Dr. Racadag failed to explain how he came to that conclusion or how that conclusion was supported by the autopsy evidence. *See Urgolites v. Bethenergy Mines, Inc.*, 17 BLR 1-20 (1992); *Fuller*, 6 BLR at 1-1294; *Duke*, 6 BLR at 1-675. Accordingly, we affirm the administrative law judge's finding that Dr. Racadag's opinion did not establish that the miner's death was due to pneumoconiosis.

In conclusion, we affirm the administrative law judge's finding that the opinions of Drs. McDevitt, Perper, and Racadag, attributing the miner's death to coal workers' pneumoconiosis, were unreasoned. Because the administrative law judge permissibly rejected the opinions supportive of claimant's case, we need not consider claimant's challenges to the administrative law judge's findings regarding the contrary opinions of Drs. Bush and Rosenberg. See *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order on Remand – 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