

BRB No. 99-0501 BLA

ROSE PAWLOWSKI)
(Widow of CASIMER F. PAWLOWSKI))

Claimant-Petitioner)

v.)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS,)
UNITED STATES DEPARTMENT OF)
LABOR)

Respondent)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Thomas S. Cometa, Kingston, Pennsylvania, for claimant.

Edward Waldman (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Benefits (98-BLA-0944) of Administrative Law Judge Robert D. Kaplan 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 seq.* (the Act). The instant case involves a survivor's claim filed on April 1, 1997. The administrative law judge initially noted that the parties stipulated that the miner had eight and one-quarter years of coal mine employment. The administrative law judge further noted that the Director, Office of Workers' Compensation Programs (the Director), stipulated that the miner suffered from pneumoconiosis. The administrative law judge,

¹Claimant is the surviving spouse of the deceased miner who died on March 17, 1997. Director's Exhibit 7.

however, found that claimant failed to establish that the miner's pneumoconiosis was due to his coal mine employment pursuant to 20 C.F.R. §718.203(c). The administrative law judge also 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 challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.203(c) and 718.205(c). The Director responds in support of the administrative law judge's finding that the evidence is insufficient to establish that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(c). However, the Director 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).

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 the 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on survivor's claims filed on or after January 1, 1982 only when the miner's death is due to pneumoconiosis. See 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). However, before any finding of entitlement can be made in a survivor's claim, a claimant must establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A claimant must also establish that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. *Boyd, supra*.

Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(c). In reports dated July 9, 1997 and August 31, 1998, Dr. Bloom diagnosed coal workers' pneumoconiosis. Director's Exhibit 9; Claimant's Exhibit 1. In a report dated August 21, 1998, Dr. Groblewski noted that the miner was "monitored for COPD secondary to anthracosilicosis with mining history throughout my care." Claimant's Exhibit 2. In an undated report, Dr. Cander noted that "the diagnosis of coal workers' pneumoconiosis [had] been established on the basis of a chest x-ray." Director's Exhibit 29.

The administrative law judge found that neither Dr. Bloom nor Dr. Groblewski set forth any basis for their opinions. Decision and Order at 3. The administrative law judge further noted that while Dr. Cander relied upon an x-ray interpretation to diagnosis pneumoconiosis, no x-ray interpretation of record indicated the etiology of the miner's pneumoconiosis. *Id.* The administrative law judge, therefore, found that the evidence was insufficient to establish that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(c). *Id.*

Inasmuch as claimant does not challenge the administrative law judge's finding that the opinions of Drs. Bloom, Groblewski and Cander are insufficient to establish that the miner's pneumoconiosis arose out of his coal mine employment, we affirm this finding. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant, however, contends that "since no physician stated the opinion that the miner's pneumoconiosis was caused by an etiology other than his exposure to dust in his coal mine employment, the [administrative law judge] improperly determined that claimant failed to establish this element of entitlement." Claimant's Brief at 3. When a miner has less than ten years of coal mine employment, the claimant must establish that his pneumoconiosis arose at least in part out of his coal mine employment. 20 C.F.R. §718.203(c). However, the United States Courts of Appeals for the Third and Fourth Circuits have held that an administrative law judge may infer a causal connection between a miner's pneumoconiosis and his coal mine employment if the record indicates no other potential dust exposure. See *Wisniewski v. Director, OWCP*, 929 F.2d 952, 15 BLR 2-57 (3d Cir. 1991); *Maxey v. Califano*, 598 F.2d 874 (4th Cir. 1979).

The Director argues that because "there are substantial gaps in the record regarding whether the miner had other potentially harmful dust exposure," it would be "unwarranted to assume that the miner's pneumoconiosis arose out of his 8.25 years of coal mine employment." Director's Brief at 6-7. However, the Director does not point to any "other potential dust exposure" in the record. Consequently, we vacate the administrative law judge's finding pursuant to 20 C.F.R. §718.203(c) and remand the case to the administrative law judge to reconsider whether the record contains any other potential dust exposure.

Claimant also contends that the administrative law judge erred in finding 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).² While Drs. Bloom and Groblewski opined that the miner's death was due to pneumoconiosis, Director's Exhibits 7, 8, 24; Claimant's Exhibits 1, 2, Drs. Spagnolo and Cander opined that the miner's death was not due to his pneumoconiosis. Director's Exhibits 11, 29. The administrative law judge found that the opinions of Drs. Bloom and Groblewski were not documented and reasoned because they failed to provide "any evidentiary basis" for their opinions. Decision and Order at 5.

Claimant generally argues that the administrative law judge erred in finding that the opinions of Drs. Bloom and Groblewski were not sufficiently documented and reasoned.

²Under Section 718.205(c)(2), pneumoconiosis will be considered a substantially contributing cause of the miner's death if it actually hastened the miner's death. *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

The administrative law judge discredited the opinions of Drs. Bloom and Groblewski because he found that their respective reports were not documented. Decision and Order at 5. Dr. Bloom began to treat the miner when he was admitted to the hospital with acute abdominal pain on March 15, 1997. Claimant's Exhibit 1. Dr. Bloom noted that claimant was hypoxic at the time of his admission. *Id.* Dr. Bloom also noted that the miner had worked in the mines for eight years and thirty-six days. *Id.* Dr. Bloom further relied upon the miner's chest x-ray and arterial blood gas study results. *Id.* Given the documentation underlying Dr. Bloom's report, we remand the case to the administrative law judge to reconsider whether Dr. Bloom's report is sufficiently documented. *See Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984) (An opinion based upon symptomatology, patient history and a physical examination is considered minimally documented).

Dr. Groblewski noted the miner's diagnoses and symptoms. *See* Director's Exhibit 24; Claimant's Exhibit 2. Consequently, the administrative law judge, on remand, must reconsider whether Dr. Groblewski's opinion is sufficiently documented. *See Hess, supra.*

Claimant also argues that the administrative law judge erred in finding that the opinions of Drs. Bloom and Groblewski were not sufficiently reasoned. Contrary to the administrative law judge's characterization, Drs. Bloom and Groblewski provided bases for their respective opinions that the miner's death was due to pneumoconiosis.³ We,

³Dr. Bloom explained that the miner's lung disease put him at increased risk for complications following a laparotomy. Claimant's Exhibit 1. Dr. Bloom noted that the miner suffered a postoperative cardiac arrest and, despite aggressive ACOS techniques, died. *Id.* Dr. Bloom further explained that:

I feel that [the miner's] pneumoconiosis was a factor in his increased risk for surgery, increased likelihood of a poor outcome, and contributed to his lack of response to a ACOS techniques when such complication did occur. In my

therefore, remand the case to the administrative law judge to reconsider whether the opinions of Drs. Bloom and Groblewski are sufficiently reasoned. In light of the administrative law judge's errors, we vacate his finding pursuant to 20 C.F.R. §718.205(c) and remand the case for further consideration.

medical opinion, his pneumoconiosis was a substantial contributing factor which contributed to his death.

Claimant's Exhibit 1.

Dr. Groblewski explained that the miner's death was directly connected to his anthracosilicosis which caused poor oxygenation and critical tissue hypoxia with cardiac arrhythmia and arrest. Claimant's Exhibit 2.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge