BRB No. 99-0533 BLA

BROOKIE WALLS (Widow of HARLAN E. WALLS)	)	
Claimant-Respondent	)	
v.	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED:
Employer-Petitioner	)	
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 F. Sutton, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

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

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order (97-BLA-1730) of Administrative Law Judge Daniel F. Sutton awarding benefits in 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). The administrative law judge, based on the parties' stipulation, credited the miner with twenty-five years of coal mine employment and adjudicated this survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718. Employer conceded that the miner suffered from pneumoconiosis arising out of coal mine employment. Further, the administrative law judge found that claimant established that the miner's death was due to

pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded survivor's benefits.

On appeal, employer contends that the administrative law judge erred in finding the evidence sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Claimant[1] responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[2]

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

[1]Claimant is the widow of the miner, Harlan E. Walls, who died on May 6, 1996. Director's Exhibits 1, 9. The miner filed a claim for benefits with the Social Security Administration (SSA) on May 16, 1973. Director's Exhibit 24. However, while the miner's 1973 SSA claim was pending, the miner filed a claim for benefits with the Department of Labor (DOL) on February 24, 1975. *Id*. On May 30, 1979, the SSA denied benefits and forwarded the case to the DOL for review. *Id*. On December 16, 1980, the miner's claim was finally denied by the DOL. *Id*. Inasmuch as the miner did not pursue this claim any further, the denial became final. Claimant filed her survivor's claim on October 15, 1996. Director's Exhibit 1.

[2]Inasmuch as the administrative law judge's length of coal mine employment finding and his finding that the miner suffered from pneumoconiosis arising out of coal mine employment are not challenged on appeal, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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).

Benefits are payable on survivor's claims filed on or after January 1, 1982 only when the miner's death was due to pneumoconiosis.[3] *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*. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction of this case arises, adopted the standard whereby pneumoconiosis will be considered a substantially contributing cause of the miner's death if it actually hastened the miner's death. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

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[3]Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

> (1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, 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.

20 C.F.R. §718.205(c).

Employer contends that the administrative law judge erred in finding the evidence sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Specifically, employer asserts that the administrative law judge failed to provide a valid basis for according dispositive weight to the opinion of Dr. Green. We disagree. Whereas Drs. Gaziano and Green opined that pneumoconiosis contributed to the miner's death, Director's Exhibit 11; Claimant's Exhibit 1, Drs. Crouch, Dahhan, Fino, Hutchins, Kleinerman, Naeye and Zaldivar opined that pneumoconiosis did not contribute to the miner's death, Employer's Exhibits 2-9, 11-16. The death certificate, signed by Dr. Bae, attributes the miner's death to cardio-respiratory arrest, chronic obstructive pulmonary disease, and cancer of the stomach and prostate. Director's Exhibit 9. The administrative law judge properly accorded greater weight to the opinion of Dr. Green than to the contrary opinions of Drs. Crouch, Dahhan, Fino, Hutchins, Kleinerman, Naeye and Zaldivar because he found Dr. Green's opinion to be better reasoned and documented.[4] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*);

[4]The administrative law judge stated, "I find that Dr. Green's questioning [of] the diagnoses of stomach and prostate cancer is reasonable since the record, apart from the death certificate, contains no objective medical evidence of cancer." Decision and Order at 14. The administrative law judge observed that "Dr. Bae did not review the autopsy findings before filling out the death certificate, and, in the absence of any medical records containing a diagnosis of cancer, I have discounted as unreliable speculation Dr. Zaldivar's assumption that there must have been some medical evidence of cancer for Dr. Bae to list cancer as a cause of death on the death certificate." *Id*. at 15. The administrative law judge also stated, "[w]hile I recognize that Dr. Kleinerman has challenged Dr. Green's assumptions regarding the relative effects of cigarette smoking and coal mine dust exposure, I do not consider Dr. Green's conclusions to be unreasonable given the fact [that] the [m]iner had a smoking history of ten pack years and a coal mining history of twenty-five years in the type [of] jobs which Dr. Naeye identified as having the greatest potential for development of simple pneumoconiosis which progresses after cessation of coal mine dust exposure." *Id*. at 16. In contrast, the administrative law judge found "the contrary opinions from the Employer's experts to be less reliable, not only as a consequence of their unsupported conclusions regarding the presence of cancer and their erroneous assumptions regarding the extent of the miner's smoking history, but because their opinions are to varying degrees influenced by an assumption that pneumoconiosis could not have played a substantial role in the [m]iner's death since the medical evidence shows that it was not disabling in 1975, shortly after the [m]iner left coal mine employment." *Id*. at 16-17. The administrative law judge, citing *See Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1

Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984).

(1987), *reh'g denied* 484 U.S. 1047 (1988), and *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 21 BLR 2-302 (4th Cir. 1998), found that "[t]his assumption is undermined [and] clearly conflicts with the well-recognized principle that pneumoconiosis is a progressive disease." *Id*. at 17.

In addition, the administrative law judge properly noted that the opinion of Dr. Green is corroborated by Dr. Gaziano's opinion. *See Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991); *Bethlehem Mines Corp. v. Massey*, 736 F.2d 120, 7 BLR 2-72 (4th Cir. 1984); *Newland v. Consolidation Coal Co.*, 6 BLR 1-1286 (1984). Thus, we reject employer's assertion that the administrative law judge failed to provide a valid basis for according dispositive weight to the opinion of Dr. Green.[5] Moreover, we reject employer's assertions that the administrative law judge substituted his opinion for that of the physicians, and that the administrative law judge selectively analyzed the medical evidence of record.

Further, since the administrative law judge relied on the opinion of Dr. Gaziano in support of a finding that the miner's death was due to pneumoconiosis, by inference, he found the doctor's opinion sufficiently reasoned. *See Pulliam v. Drummond Coal Co.*, 7 BLR 1-846 (1985); *Adamson v. Director, OWCP*, 7 BLR 1-229 (1984). Consequently, we reject employer's assertion that Dr. Gaziano's opinion is not well reasoned. Dr. Gaziano opined that the miner died of pneumonia with coexistent coal worker's pneumoconiosis. Director's Exhibit 11. Further, Dr. Gaziano explained that although "[t]he death certificate stated the presence of stomach cancer...[,] I do not get such an appreciation of the state of illness he was in as a result of the cancer."[6] *Id*. Thus, inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). *See Shuff, supra*.

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[5]We reject employer's assertion that the administrative law judge erred in failing to explain why he accorded greater weight to the opinion of Dr. Green than to the contrary opinions of Drs. Kleinerman, Naeye and Zaldivar, in view of the superior qualifications of Drs. Kleinerman, Naeye and Zaldivar. An administrative law judge is not required to defer to a doctor with superior qualifications. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998)*; Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Worley v. BlueDiamond Coal Co.*, 12 BLR 1-20 (1988). Although the administrative law judge did not rely upon the physicians' qualifications in his weighing of the conflicting evidence, he did note the qualifications of the physicians. Decision and Order at 4-8, 11.

[6]As previously noted, the administrative law judge stated that "the record, apart from the death certificate, contains no objective medical evidence of cancer." Decision and Order at 14.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge