

RB No. 04-0461 BLA

LORETTA REBARCHAK )  
(Widow of CYRIL REBARCHAK) )  
) )  
Claimant-Petitioner )  
) )  
v. )  
) )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
) )  
Party-in-Interest )

DATE ISSUED: 02/11/2005

DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Harry T. Coleman, Scranton, Pennsylvania, for claimant.

Sarah M. Hurley (Howard Radzely, 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 Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (2003-BLA-5985) of Administrative Law Judge Ralph A. Romano denying benefits on 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). Based on the date of filing, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718.<sup>1</sup> The administrative law judge found

<sup>1</sup> The record indicates that the miner filed an application for benefits on February 4, 1982, which was denied by Administrative Law Judge Martin J. Dolan on November 26, 1986, due to the miner's failure to establish total respiratory disability, although the presence of pneumoconiosis was established. Director's Exhibit 1. On appeal, the Board affirmed the denial of benefits. *Rebarchak v. Director, OWCP*, BRB No. 86-3250 BLA (July 29, 1988)

that the evidence supported the parties' agreement that the miner worked for twenty-two years as a coal miner, and that the parties also stipulated that the miner suffered from the presence of coal workers' pneumoconiosis. Hearing Transcript at 16-17. The administrative law judge further found the evidence of record insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's weighing of the evidence in finding that the miner's death was not due to pneumoconiosis at Section 718.205(c). The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence.

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 this Board and may not be disturbed. 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).

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment, that the miner's death was due to pneumoconiosis, or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. See 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). 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)(2); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989).<sup>2</sup>

---

(unpub.). The miner's subsequent petition for modification was denied by the district director on June 20, 1990. Director's Exhibit 1. The miner filed a second application for benefits on September 15, 1992, which was denied by the district director on January 20, 1993, as the miner failed to establish any required element of entitlement. Director's Exhibit 2. A third application for living miner's benefits was filed by the miner on July 30, 1996, and was denied by the district director on November 1, 1996, as the miner failed to establish total disability due to pneumoconiosis. Director's Exhibit 3. The miner died on January 15, 2002, Claimant's Exhibit 1; Director's Exhibit 8, and claimant filed for survivor's benefits on August 21, 2002. Director's Exhibit 5. Claimant is appealing only the denial of the survivor's claim herein.

<sup>2</sup> Since the miner's last coal mine employment took place in the Commonwealth of Pennsylvania, the Board will apply the law of the United States Court of Appeals for the

Pursuant to Section 718.205(c), claimant contends that the administrative law judge erred by failing to accord determinative weight to the opinion of Dr. Yurko, claimant's treating physician. The Decision and Order indicates that the administrative law judge accorded little weight to Dr. Yurko's opinion that pneumoconiosis played a major role in shortening the miner's life and contributing to his underlying heart disease. Director's Exhibits 9, 10, 12, 17, 19; Decision and Order at 8. The administrative law judge determined that this opinion was not well documented and reasoned, despite this physician's status as a treating physician, as Dr. Yurko failed to provide a rationale or documentation for his conclusion regarding the cause of the miner's death. Decision and Order at 8. As the administrative law judge is not required to credit the opinion of a treating physician, *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994), and it is within the administrative law judge's discretion to determine whether a medical report is documented and reasoned, we find no error in the administrative law judge's weighing of Dr. Yurko's opinion. 20 C.F.R. §718.104(d)(5); *Trumbo*, 17 BLR 1-85; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); see *Soubik v. Director, OWCP*, 366 F.3d 226, 23 BLR 2-85 (3d Cir. 2004). Similarly, we hold that the administrative law judge permissibly accorded little weight to the miner's death certificate, signed by Dr. Steen, as it contained no rationale for its conclusion that anthracosilicosis contributed to the miner's death. Claimant's Exhibit 1; Director's Exhibit 8; Decision and Order at 8; *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990).

We further hold that the administrative law judge permissibly credited the opinion of Dr. Cander that the miner's death was not due to, or hastened by the miner's minimal pneumoconiosis, as the administrative law judge permissibly found that this opinion was better documented and reasoned, and more persuasive than the other evidence of record. Director's Exhibit 13; Decision and Order at 8; 20 C.F.R. §718.104(d)(5); *Lafferty v. Cannerton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Because it is within the discretion of the administrative law judge as the trier of fact, to determine whether a medical report is adequately documented and reasoned and the administrative law judge has properly exercised his discretion in this case, we affirm the administrative law judge's finding that the medical reports of record do not support a finding of death due to pneumoconiosis under Section 718.205(c), or entitlement to benefits. *Lukosevicz*, 888 F.2d 1001, 13 BLR 2-101.

---

Third Circuit. Director's Exhibit 3; see *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Accordingly, the Decision and Order of the administrative law judge denying survivor's benefits is affirmed.

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge