BRB No. 97-0798 BLA

BILLIE L. SHROUT (Widow of CLIFTON R. SHROUT) Claimant-Respondent v. EASTERN ASSOCIATED COAL COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: DECISION and ORDER

Appeal of the Decision and Order of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Gregory C. Hook (Hook & Hook), Waynesburg, Pennsylvania, for claimant.

Laura M. Klaus (Arter & Hadden), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (95-BLA-360) of Administrative Law Judge Michael P. Lesniak awarding 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, October 15, 1993, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge initially found that the parties stipulated to thirty-four years of coal mine employment. The administrative law judge then considered the evidence, accorded the greatest weight to Dr. Goldblatt's opinion, and found that claimant established that pneumoconiosis contributed to the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were awarded as of November 1, 1992, the first day of the month in which the miner died. On appeal, employer challenges the administrative law judge's

weighing of the evidence. Claimant responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not responded to this appeal.

The Board's scope of review is defined by statute. We must affirm the findings of fact and conclusions of law of the administrative law judge if they 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).

In a survivor's claim filed after January 1, 1982, claimant must establish the existence of pneumoconiosis under any of the methods available at 20 C.F.R. §718.202(a)(1)-(4) before establishing death due to pneumoconiosis at 20 C.F.R. §718.205(c). *Trumbo v. Reading Anthracite Coal Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Furthermore, the United States Court of Appeals for the Fourth Circuit, wherein jurisdiction of this cases arises, has held that in order for a survivor to demonstrate that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death pursuant to 20 C.F.R. §718.205(c), the survivor may demonstrate that the miner's death was hastened to any degree by the presence of his pneumoconiosis. *See Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

The administrative law judge, in the instant case, listed all of the relevant medical evidence, including results from objective tests performed on the miner before his death, hospital records, death certificate, autopsy report, and medical opinions. Decision and Order at 3-8. In determining whether claimant established death due to pneumoconiosis pursuant to Section 718.205(c), the administrative law judge discussed only the opinions of the three physicians who submitted opinions on the cause of the miner's death. Decision and Order at 9-10. The administrative law judge initially found that Dr. Ranvaya's opinion, that pneumoconiosis did not contribute to the miner's death, was not well-reasoned or well-documented because the physician merely answered "yes" or "no" to questions which were posed to him. The administrative law judge therefore accorded no weight to the opinion.[1] Decision and Order at 9. The administrative law judge then found that the remaining two opinions, by Drs. Goldblatt and Kleinerman, were in conflict, and that both physicians are extremely well-qualified. *Id*. The administrative law judge accorded less weight to Dr. Kleinerman's opinion that pneumoconiosis did not hasten the miner's death for several reasons. First, the administrative law judge found that despite the physician's finding of twelve macules of pneumoconiosis in the lung slides he reviewed, the physician "continued to insist that this represented a minimal amount of pneumoconiosis." *Id*. Second, the administrative law judge found that Dr. Kleinerman's statement that "[t]he mistaken concept

[1] Employer does not challenge whether the miner suffered from pneumoconiosis or the administrative law judge's discrediting of Dr. Ranavaya's opinion. These findings are therefore affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

that simple coal workers pneumoconiosis is a cause of cor pulmonale has been corrected in recent years" is antithetical to the Act because a claimant may prove total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c)(3) by establishing that he suffers from cor pulmonale with right-sided congestive heart failure. Lastly, the administrative law judge found that Dr. Kleinerman contradicted himself as to whether the 1990 arterial blood gas study values showed any degree of hypoxemia. The administrative law judge concluded by finding that Dr. Goldblatt's opinion that pneumoconiosis contributed to the miner's death was well-reasoned and well-documented, and thus entitled to the greatest weight. Decision and Order at 10.

Initially, employer argues that the administrative law judge overstepped his role by finding that twelve macules of pneumoconiosis is not a minimal amount of pneumoconiosis. Employer contends that the record contains no evidence to the contrary and that the administrative law judge may not substitute his opinion for that of a physician. We agree. The administrative law judge may not interpret the medical evidence, he may only weigh the evidence. *See Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986); *Bogan v. Consolidation Coal Co.*, 6 BLR 1-1000 (1984). We therefore hold that it was error for the administrative law judge to find that Dr. Kleinerman's opinion on the extent of pneumoconiosis demonstrated in the slides he viewed was incorrect as the administrative law judge impermissibly substituted his own conclusions for those of the physician. *See Marcum*, *supra*.

Employer next contends that the administrative law judge's statements regarding the relationship between cor pulmonale and pneumoconiosis as defined in the regulations and Act are incorrect. Employer also argues that the administrative law judge's finding that Dr. Kleinerman's opinion is hostile to the Act is erroneous as that concept is inapplicable in this case. Employer's contention has merit. The regulations do not state that pneumoconiosis is a cause of cor pulmonale, but rather, specify that a miner who suffers from pneumoconiosis and cor pulmonale with right sided congestive heart failure can establish that he is totally disabled. *See* 20 C.F.R. §718.204(c)(3). The absence or presence of cor pulmonale does not demonstrate that the miner suffered from pneumoconiosis or that pneumoconiosis contributed to the miner's death, which are the only relevant issues in this claim. *See* 20 C.F.R. §718.205(c); *Trumbo, supra; Neeley, supra*. We further agree that the administrative law judge's determination that Dr. Kleinerman's opinion is hostile to the Act is erroneous as that concept applies when a physician forecloses all possibility that simple pneumoconiosis can be totally disabling. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719, 18 BLR 2-216 (4th Cir. 1993)*; Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988); *Butela v. United States Steel Corp.*, 8 BLR 1-48 (1985).

Employer also contends that the administrative law judge erred in finding that Dr. Kleinerman contradicted himself in his two opinions, dated May 11, 1995 and June 24, 1996, and his deposition on July 9, 1996. Dr. Kleinerman stated in his first opinion that the August 29, 1990 PO_2 value was 64.8, and stated that the PO_2 and oxygen saturation are slightly below normal accepted levels, indicating a mild degree of hypoxemia. Employer's

Exhibit 3. Then, in his second report, Dr. Kleinerman stated that the miner had been sixty-two years old when his arterial blood was analyzed and revealed oxygen tension of 75, which was normal for a man of the miner's age. Employer's Exhibit 5. In his deposition, Dr. Kleinerman stated that the miner had at least one occurrence of hypoxemia with a PO_2 of 64, but that a PO_2 of 75 was normal. Employer's Exhibit 6. Employer contends that the blood gas studies reveal that a PO_2 value of 64.8 was never obtained, and that this error was apparently made when Dr. Kleinerman was dictating his first report, because the actual value obtained was 74.8. The record indicates that the August 1990 PO_2 value is 74.8. Director's Exhibit 22. Additionally, the record contains the results of two other blood gas studies, which were performed in 1992 when the miner was older than sixty-two years of age, and where the PO_2 values were 100 and 105, thus making it clear that the basis of the physician's second opinion is the August 1990 blood gas study. Director's Exhibit 9. We therefore agree with employer that rather than the physician having contradicted himself on the issue of whether the miner had hypoxemia, his differing diagnoses were based on differing PO_2 values, the lower value of which appears to have been made a part of Dr. Kleinerman's records based on a typographical error. As we agree with employer that the administrative law judge's reasons for discounting Dr. Kleinerman's opinions are based on this error, we vacate his findings and remand the case for further consideration of those opinions.

Lastly, employer contends that the administrative law judge failed to fully consider the evidence to determine whether Dr. Goldblatt's diagnosis of cor pulmonale was proper. Employer contends that Dr. Goldblatt is the only physician to reach this conclusion and that one of the critical bases of the physician's reasoning was that the miner had suffered from cor pulmonale. Petition for Review at 15. We reject this argument as it is without merit, and again reiterate that the issue of whether the miner had suffered from cor pulmonale is insufficient to establish whether the miner had pneumoconiosis and whether pneumoconiosis contributed to his death. *See* 20 C.F.R. §§718.204(c)(3), 718.205(c). However, if the physician based his diagnosis of pneumoconiosis and the role of pneumoconiosis in the miner's death based upon his diagnosis of cor pulmonale, as contended by employer, then the administrative law judge must consider whether Dr. Goldblatt's opinion is reasoned and documented on remand. We agree with employer that the administrative law judge failed to consider the evidence in its entirety, instead focusing only on the three medical opinions by Drs. Ranavaya, Goldblatt and Kleinerman.[2] On remand, the administrative law judge must consider all of the relevant evidence and determine whether it establishes that pneumoconiosis contributed to the miner's death pursuant to Section 718.205(c).

[2] The administrative law judge did not weigh the death certificate, the autopsy report, or hospital records which document the miner's condition prior to his death. Director's Exhibits 7, 9.

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