

BRB No. 07-0423 BLA

B.S.)	
(Widow of B.S.))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 01/31/2008
)	
WESTMORELAND COAL COMPANY,)	
c/o ACORDIA EMPLOYERS SERVICE)	
)	
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 of William S. Colwell, Administrative Law Judge, United States Department of Labor.

Ronald C. Cox (Atkins Law Office), Harlan, Kentucky, for claimant.

Natalie D. Brown (Jackson Kelly PLLC), Lexington, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (04-BLA-5865) of Administrative Law Judge William S. Colwell denying benefits 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). This case involves a survivor's claim filed on October 25, 2002.¹

¹ The miner initially filed a claim for benefits on April 8, 1974. In a Decision and Order dated September 24, 1982, Administrative Law Judge Alexander Karst denied benefits. The miner filed a second claim on August 13, 1985. In a Decision and Order

After crediting the miner with at least twenty-three years of coal mine employment,² the administrative law judge noted that employer conceded that the miner suffered from pneumoconiosis caused by his coal mine employment. The administrative law judge found that employer's concession was supported by the autopsy evidence. However, the administrative law judge found that the evidence did not 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 contends that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant contends that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Because this survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).³ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v.*

dated August 2, 1993, Administrative Law Judge Bernard J. Gilday, Jr. denied benefits. The miner filed a third claim on June 14, 1999. In a Decision and Order dated May 31, 2002, Administrative Law Judge Joseph E. Kane denied benefits. Director's Exhibit 1.

² Although evidence submitted in connection with the miner's claims indicates that the miner's coal mine employment occurred in both Kentucky and Virginia, the record indicates the miner's most recent coal mine employment occurred in Virginia. Director's Exhibit 1. Accordingly, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

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

(1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or

Director, OWCP, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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)(5); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992).

In his consideration of whether the evidence established that the miner's death was due to pneumoconiosis, the administrative law judge credited the opinions of Drs. Repsher and Crouch, that the miner's death was not due to pneumoconiosis, over Dr. Miller's contrary opinion. Decision and Order at 13-15. The administrative law judge, therefore, found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Id.*

Claimant argues that the administrative law judge erred in failing to find that Dr. Miller's opinion established that the miner's death was due to pneumoconiosis. Dr. Miller, the miner's treating physician, completed the miner's death certificate. Dr. Miller listed "metastatic bowel cancer" as the immediate cause of death. Director's Exhibit 12. Dr. Miller listed "coal workers' pneumoconiosis" as an "[o]ther significant condition contribut[ing] to death but not resulting in the underlying cause...." *Id.*

Dr. Miller also completed an October 11, 2002 report, wherein he stated:

Based on [the] pulmonary function studies done before [the miner's] lung cancer, it is my reasoned medical opinion that he had a totally and permanently disabling lung lung [sic] condition. His years of coal dust exposure while working in the mines and the changes on his chest x-ray

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- (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.
 - (4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.
 - (5) 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).

would lead me to conclude that his coal dust exposure was a major contributing factor in his respiratory condition.

It is my reasoned opinion that [the miner's] lung condition contributed to his death.

Director's Exhibit 13.

Claimant argues that the administrative law judge erred in not according greater weight to Dr. Miller's opinion based upon his status as the miner's treating physician. We disagree. Section 718.104(d) provides that the weight given to the opinion of a treating physician shall "be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5); *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 535, 21 BLR 2-323, 2-340 (4th Cir. 1998). In this case, the administrative law judge found that Dr. Miller did not offer any explanation for his opinion that the miner's pneumoconiosis contributed to his death.⁴ Decision and Order at 15. Substantial evidence supports this finding. The administrative law judge, therefore, permissibly determined that Dr. Miller's opinion was not sufficiently reasoned. *Id.*; *see Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-263 (4th Cir. 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

⁴ Dr. Miller provided no explanation for his findings on the miner's death certificate. *See* Director's Exhibit 12. In regard to Dr. Miller's October 11, 2002 report, the administrative law judge acknowledged that Dr. Miller explained that his opinion, that the miner suffered from a respiratory impairment prior to being diagnosed with cancer in 2000, was supported by the miner's pulmonary function study results. Decision and Order at 15. The administrative law judge further noted that Dr. Miller explained how the miner's chest x-ray findings supported his finding that the miner's coal dust exposure was a contributory factor to his respiratory condition. *Id.* However, the administrative law judge found that:

Dr. Miller [did] not explain how he then [came] to the conclusion that the portion of the respiratory impairment caused by coal dust exposure played a role in hastening the [m]iner's death when he specifically identified metastatic bowel cancer as the immediate cause of the [m]iner's death.

Decision and Order at 15.

We also reject claimant's contention that Dr. Ally's autopsy report supports a finding that the miner's death was due to pneumoconiosis. As the administrative law judge accurately noted, Dr. Ally, the autopsy prosector, did not address the cause of the miner's death in the autopsy report. Decision and Order at 14; Director's Exhibit 13.

The remaining physicians of record, Drs. Repsher, Crouch, Roggli, and Bush, opined that the miner's death was not due to pneumoconiosis. *See* Employer's Exhibits 7-12, 14. Although the administrative law judge accorded less weight to the opinions of Drs. Roggli and Bush, Decision and Order at 14-15, the administrative law judge found that the opinions of Drs. Repsher and Crouch were sufficiently reasoned, and supported a finding that the miner's death was not due to pneumoconiosis.⁵ *See* Decision and Order at 14-15. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). We therefore affirm the denial of benefits.

⁵ Dr. Repsher opined that the miner's coal workers' pneumoconiosis did not cause, contribute to, or hasten his death. Employer's Exhibits 9, 12 at 18-19. Dr. Repsher opined that the miner died of a probable acute myocardial infarction that was complicated by acute pulmonary edema. Employer's Exhibit 12 at 18, 21. Dr. Crouch opined that the miner's coal workers' pneumoconiosis was too mild to have caused a clinically significant degree of respiratory impairment and could not have caused, contributed to, or otherwise hastened his death. Employer's Exhibit 8. Dr. Crouch opined the miner's death was most likely due to complications of lung cancer. *Id.*

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge