

BRB No. 97-0776 BLA

ONA ENGLE)	
(Widow of JUNIOR ENGLE))	
)	
Claimant-Petitioner)	
)	
v.)	Date Issued:
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Ona Engle, Wooton, Kentucky, *pro se*.

Jill M. Otte (Marvin Krislov, Deputy Solicitor for National Operations; 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, the United States Department of Labor.

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

PER CURIAM:

Claimant appeals, without the aid of counsel, the Decision and Order (95-BLA-1046) of Administrative Law Judge Robert L. Hillyard 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).¹ The administrative

¹Claimant is the surviving widow of the miner, Junior Engle, who died on February 14, 1992, Director's Exhibit 6. The miner had originally filed a living miner's claim which was ultimately denied by the Department of Labor on July 5, 1983, Director's Exhibit 22. No further action was taken on the miner's claim and it is not at

law judge found thirty-nine years of coal mine employment established and adjudicated the survivor's claim pursuant to 20 C.F.R. Part 718.² The administrative law judge found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1)-(4), Decision and Order at 11-15, that total disability was not established pursuant to 20 C.F.R. §718.204(c)(1)-(4), Decision and Order at 16-17, and, ultimately, that death due to pneumoconiosis was not established pursuant to 20 C.F.R. §718.205(c), Decision and Order at 16-18. Accordingly, benefits were denied. Claimant's appeal, herein, followed. The Director, Office of Workers' Compensation Programs, [the Director] responds, urging that the administrative law judge's Decision and Order denying benefits be affirmed.

In an appeal filed by a claimant without the aid of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence, *see Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1985). If the findings of fact and conclusions of law of the administrative law judge 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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

issue herein. Subsequent to the miner's death, claimant filed a survivor's claim on May 18, 1994, Director's Exhibit 1.

²Inasmuch as the administrative law judge found that the miner's coal mine employment occurred in Tennessee and Kentucky, the administrative law judge found that the instant case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*). Decision and Order at 3. Although claimant contends that the miner was never employed in Tennessee and that his last coal mine employment occurred in Kentucky, any error by the administrative law judge in this regard is harmless inasmuch as the instant case would still arise within the jurisdiction of the Sixth Circuit court, *see Shupe, supra*; *see also Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

In order to establish entitlement in this survivor's claim filed after January 1, 1982, in which the miner had not been awarded benefits on a claim filed prior to January 1, 1982, see 30 U.S.C. §§901; 932(1), claimant must establish the existence of pneumoconiosis, see 20 C.F.R. §718.202; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988), and that the miner's death was due to pneumoconiosis, see 20 C.F.R. §§718.1; 718.205(c); *Neeley, supra*; cf. *Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989), which arose out of coal mine employment, see 20 C.F.R. §718.203; *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Moreover, the United States Court of Appeals for the Sixth Circuit, wherein this case arises, has held that, pursuant to Section 718.205(c)(2), pneumoconiosis substantially contributes to death if it hastens the miner's death, see *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); see also *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).

The administrative law judge considered all of the relevant evidence under Section 718.205(c) and found it insufficient to establish death due to pneumoconiosis. The relevant evidence includes the opinion of the miner's treating physician, Dr. Yalamanchi, who completed the miner's death certificate, Director's Exhibit 6, which attributed the immediate cause of the miner's death to acute myocardial infarction, but also listed pneumoconiosis as an underlying cause of the miner's death. Dr. Yalamanchi subsequently completed a statement that the miner had pneumoconiosis, that part of the miner's heart problems "could" be due to his lung disease and that pneumoconiosis contributed to the miner's heart disease partly and is the cause of the miner's death, Claimant's Exhibit 2. The record also includes the miner's hospital records completed by Dr. Yalamanchi relating to the miner's hospitalization just prior to his death in February, 1992, in which Dr. Yalamanchi diagnoses pneumoconiosis and states that the miner died from ventricular tachycardia, Director's Exhibit 13. Hospital records relating to prior hospitalizations of the miner dating from June, 1989, through January, 1992, completed by Dr. Yalamanchi do not mention any evidence of pneumoconiosis, *id.*

In addition, Dr. Abalos completed the miner's autopsy report, Director's Exhibit 7, in which he notes finding anthracotic pigments as well as blackish colored streakings and diagnoses anthracosis. Finally, Dr. Naeye, a pathologist, Director's Exhibit 8, and Dr. Broudy, a board-certified physician in internal medicine and pulmonary medicine, Director's Exhibits 22, 24, reviewed the medical and autopsy evidence and found no evidence of coal workers' pneumoconiosis and/or pneumoconiosis and, therefore, that it did not hasten the miner's death and/or caused or contributed to the miner's death.

The administrative law judge noted that, although Dr. Yalamanchi initially diagnosed pneumoconiosis in the discharge summary relating to the miner's hospitalization just prior to his death in February, 1992, Dr. Yalamanchi stated that the miner died from ventricular tachycardia, but did not explain how or if pneumoconiosis affected the miner's heart condition and did not mention pneumoconiosis in any of the

previous hospital records he completed relating to the miner's prior hospitalizations, Director's Exhibit 13. Decision and Order at 9, 14, 17. The administrative law judge found that Dr. Yalamanchi did not explain any basis for and/or provide any reasoning or documentation to support his diagnosis of pneumoconiosis, Decision and Order at 13-14, 17, or his conclusion on the miner's death certificate and in his subsequent opinion that pneumoconiosis was the underlying cause of the miner's death, Decision and Order at 14, 16-17. Moreover, the administrative law judge found Dr. Yalamanchi's opinion stating that part of the miner's heart problems "could" be due to his lung disease and then concluding that pneumoconiosis contributed to the miner's heart disease partly and caused the miner's death, Claimant's Exhibit 2, was equivocal, Decision and Order at 16-17. Thus, the administrative law judge found that Dr. Yalamanchi's opinion was not adequately documented or reasoned and, therefore, despite the fact that he was the miner's treating physician, gave his opinion little weight, Decision and Order at 13, 17.

In addition, the administrative law judge also properly found that Dr. Abalos did not state whether the anthracosis he diagnosed contributed to, caused or affected the miner's death in any way, Decision and Order at 8, 17. Finally, the administrative law judge found that the opinions of Drs. Naeye and Broudy that the miner did not have pneumoconiosis and, therefore, that it did not contribute to the miner's death to be reasoned and documented, Decision and Order at 13, 15-17.

It is for the administrative law judge, as the trier-of-fact, to determine whether an opinion is documented and reasoned, see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985), and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge, see *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Moreover, an administrative law judge may properly question an opinion, such as Dr. Yalamanchi's medical opinion, that is, as the administrative law judge found, equivocal or qualified, see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). Thus, as the administrative law judge found, inasmuch as Dr. Yalamanchi's status as the miner's treating physician is just one of the factors to be considered in rendering his decision, see *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994), we affirm the administrative law judge's finding that Dr. Yalamanchi's opinion that pneumoconiosis was the underlying cause of the miner's death as expressed in the miner's death certificate was not adequately documented and reasoned, see generally *Willis v. Birchfield Mining Co.*, 15 BLR 1-59 (1991), and affirm the administrative law judge's crediting of the contrary opinions from Drs. Naeye and Broudy as documented and reasoned.

In addition, inasmuch as there is no evidence of complicated pneumoconiosis in the record, the irrebuttable presumption at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, is, as the administrative law judge properly found, inapplicable, see 20 C.F.R. §§718.205(c)(3), 718.304. Decision and Order at 16. Moreover, the presumptions at Section 411(c)(2) of the Act, 30 U.S.C.

§921(c)(2), as implemented by 20 C.F.R. §718.303, at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, and at Section 411(c)(5) of the Act, 30 U.S.C. §921(c)(5), as implemented by 20 C.F.R. §718.306, are also inapplicable to this survivor's claim filed after January 1, 1982, see 30 U.S.C. §921(c)(2), (c)(5); 20 C.F.R. §718.303(c); 20 C.F.R. §718.305(a), (e); Director's Exhibit 1. Thus, we affirm the administrative law judge's finding that death due to pneumoconiosis was not established pursuant to Section 718.205(c). Consequently, inasmuch as claimant failed to establish death due to pneumoconiosis, a requisite element of entitlement in this survivor's claim, entitlement on the survivor's claim is precluded, see *Neeley, supra*; *Smith, supra*.³

³Inasmuch as we affirm the administrative law judge's finding that death due to pneumoconiosis was not established pursuant to Section 718.205(c), we need not address the administrative law judge's findings pursuant to Section 718.202(a)(1)-(4), see *Neeley, supra*; *Smith, supra*. Moreover, any error by the administrative law judge in addressing whether total disability was established pursuant to Section 718.204(c) was harmless, see *Larioni, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge