BRB No. 88-1188 BLA

SOPHIE ZERAMBO (Widow of GEORGE ZERAMBO)	)	
Claimant-Respondent	)	
v.	)	
BETHENERGY MINES, INCORPORATED	)	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 A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

William R. Miller (Ceisler/Richman/Sweet Law Firm), Washington, Pennsylvania, for employer.

Before: STAGE, Chief Administrative Appeals Judge, DOLDER, Administrative Appeals Judge, and CLARKE, Administrative Law Judge.*

PER CURIAM:

Employer appeals the Decision and Order (86-BLA-3020) of Administrative Law Judge Daniel A. Sarno, Jr., 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). The administrative law judge

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

reviewed this claim pursuant to the provisions of 20 C.F.R. Part 718, and credited the miner with at least twenty-four years of qualifying coal mine employment. The administrative law judge then found that the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(2) and 718.203(b), and established death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2). Accordingly, benefits were awarded. Employer appeals, challenging the administrative law judge's findings pursuant to Sections 718.202(a)(2) and 718.205(c)(2). Claimant and the Director, Office of Workers' Compensation Programs, have not participated in this appeal.[1]

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] The administrative law judge's findings pursuant to Section 718.203(b), and with regard to the length of coal mine employment, are affirmed as unchallenged on appeal. 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 by 30 U.S.C. §932(a); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence, consistent with applicable law, and must be affirmed. Contrary to employer's contentions, the administrative law judge considered all of the evidence of record relevant to the issues of the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and death due to pneumoconiosis pursuant to Section 718.205(c), and permissibly found that the opinion of Dr. Wecht was well-reasoned and documented. See generally Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987); Lucostic v. United States Steel Corp., 8 BLR 1-46 (1985). Dr. Wecht performed the autopsy, and determined that the miner's pulmonary pathology was coal workers' pneumoconiosis which substantially contributed to his death. Director's Exhibits 7, 8; see Lukosevicz v. Director, OWCP, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989). The administrative law judge then acted within his discretion in according determinative weight to Dr. Wecht's opinion, as the physician had the opportunity to perform both gross and microscopic examinations; and less weight to the opinions of Drs. Naeye and Mendelow, who stated that the miner did not have

pneumoconiosis and that the miner's coal mine employment exposure did not cause or contribute in any way to his death, as these physicians merely reviewed medical records and the autopsy protocol, and examined the autopsy slides. Decision and Order at 8; see generally United States Steel Corp. v. Oravetz, 686 F.2d 197, 4 BLR 2-130 (3d Cir. 1982); Fetterman v. Director, OWCP, 7 BLR 1-688 (1985). Employer's arguments do not demonstrate reversible error by the administrative law judge in crediting the opinion of Dr. Wecht; rather, they address the weight of the evidence, the inferences which could be drawn therefrom, and possible grounds for determining the probative value of the conflicting opinions, all issues which are within the sole province of the administrative law judge as the trier-of-fact. See generally Price v. Peabody Coal Co., 7 BLR 1-671 (1985). The Board, however, is not empowered to reweigh the evidence or to substitute its factual inferences for those of the administrative law judge. See Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989). The administrative law judge's findings pursuant to Sections 718.202(a)(2) and 718.204(c)(2) are supported by substantial evidence in the record, and we hereby affirm them.

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

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

DAVID A. CLARKE, JR.
Administrative Law Judge