

BRB No. 95-0392 BLA

LILLIAN E. TURNER)
(Widow of CLYDE C. TURNER))
)
Claimant-Petitioner)
)
v.)
)
DRUMMOND COMPANY, INCORPORATED))
) DATE ISSUED:
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 James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

William Z. Cullen (Cooper, Mitch, Crawford, Kuyendall & Whatley), Birmingham, Alabama, for claimant.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (93-BLA-1734) of Administrative

¹Claimant is Lillian E. Turner, widow of the miner, Clyde C. Turner, who filed claims for benefits on December 19, 1973 and November 2, 1978, which were ultimately denied when the Board affirmed Administrative Law Judge Reno E. Bonfanti's Decision and Order on Remand denying benefits. Director's Exhibit 20; *Turner v. Director, OWCP*, BRB No. 85-717 BLA (Feb. 19, 1987)(unpub.). The

Law Judge James W. Kerr, Jr. 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). The administrative law judge credited the miner with "at least" forty-six years of qualifying coal mine employment, found the existence of pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(1), (2), but concluded that the evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in his weighing of Dr. Howell's opinion and in failing to find that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Employer has not responded to this appeal. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate.²

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).

Claimant contends that the administrative law judge failed to consider Dr. Howell's opinion dated July 29, 1992, Director's Exhibit 6, in conjunction with his medical treatment notes spanning 1988 through 1992 and Dr. Howell's status as claimant's treating physician. Claimant's Brief at 2, 6-8. Dr. Howell, in his report of

miner died on February 19, 1992, Director's Exhibit 5, and claimant filed a survivor's claim on May 1, 1992, Director's Exhibit 1.

²We affirm the administrative law judge's findings regarding length of coal mine employment and pursuant to Section 718.202(a)(1) and (2) as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

July 29, 1992, stated:

[The miner] had an autopsy proving anthracosis of his lungs. This anthracosis contributed to his pulmonary dysfunction. Mr. Turner had severe bronchitis and recurrent pneumonia throughout the period of his life from his stroke until his death. The anthracosis contributed to his pulmonary dysfunction and thereby directly contributed to his death.

Director's Exhibit 6.

The administrative law judge found that Dr. Howell's report of July 29, 1992 is cursory and neither well-reasoned nor well-documented. Decision and Order at 6. The administrative law judge further found that:

Dr. Howell's report is particularly sketchy and unpersuasive, in light of the fact that he had apparently been the miner's treating physician since February 24, 1978; that there are only isolated references to COPD in Dr. Howell's medical notes; and [that] Dr. Howell had previously reported normal chest x-rays and normal resting arterial blood gases, and only a mild ventilatory defect on pulmonary function study which was attributed to a lack of muscle coordination.

Decision and Order at 6. Thus, the administrative law judge concluded that the evidence was insufficient to carry claimant's burden of proof pursuant to Section 718.205(c).

Contrary to claimant's contentions, the administrative law judge considered Dr. Howell's notes regarding the miner's treatment and his prior medical reports as well as his status as claimant's treating physician. Decision and Order at 6; Director's Exhibits 7, 20.

Claimant argues that in this case arising within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit, the administrative law judge is required to accord great weight to the examining physician's unequivocal diagnosis. Claimant's Brief at 3-4, 6, citing *McClendon v. Drummond Coal Co.*, 861 F.2d 1512, 12 BLR 2-108 (11th Cir. 1988). We disagree. In *McClendon*, the court held only that an administrative law judge "was entitled to accord greater significance" to an examining physician, not that he was required to do so. *McClendon*, 861 F.2d at 1514, 12 BLR at 2-109. The Board similarly has held that an administrative law judge may, but is not required to, assign greater weight to the opinion of a treating physician. *Berta v. Peabody Coal Co.*, 16 BLR 1-69 (1992); *Wetzel v. Director*,

OWCP, 8 BLR 1-139 (1985).

Further, whether a medical report is sufficiently documented and reasoned is for the administrative law judge as the fact-finder to determine. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985). In this case, the administrative law judge permissibly found Dr. Howell's July 29, 1992 opinion to be neither well-reasoned nor well-documented because Dr. Howell did not state which factors he relied on in making his diagnosis and failed to explain how his findings supported his diagnosis. See *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985). Thus, we reject claimant's contentions of error and affirm the administrative law judge's findings pursuant to Section 718.205(c).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge