

BRB No. 02-0118 BLA

SUSAN J. BRADLEY )  
(Widow of RICHARD P. BRADLEY) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 )  
GREENWICH COLLIERIES )  
 )  
Employer-Respondent )  
 )  
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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Robert J. Bilonick (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose), Johnstown, Pennsylvania, for employer.

Sarah M. Hurley (Eugene Scalia, Solicitor of Labor; 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, United States Department of Labor.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (01-BLA-0116) of Administrative Law Judge Daniel L. Leland 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).<sup>1</sup> Based on the filing date of August 27, 1999, the administrative law judge adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718. Director's Exhibit 1. The administrative law judge credited the miner with thirty-seven years of coal mine employment and found employer to be the responsible operator. The administrative law judge, however, found the evidence of record insufficient to establish the existence of complicated pneumoconiosis at 20 C.F.R. §718.304, and insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

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<sup>1</sup> The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

On appeal, claimant contends that the administrative law judge erred in not finding complicated pneumoconiosis and death due to pneumoconiosis established based on the medical opinion evidence of record. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), responds, agreeing with claimant that the administrative law judge erred in his findings concerning the medical opinion evidence and urging remand of the instant case for further consideration.<sup>2</sup>

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).

To establish entitlement to survivor's benefits, claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v.*

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<sup>2</sup> We affirm the findings of the administrative law judge on the length of coal mine employment and responsible operator as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

*Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). For survivor's claims filed on or after January 1, 1982, the miner's death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304 is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

Claimant first argues that the administrative law judge erred in not finding complicated pneumoconiosis established. Specifically, claimant asserts that the administrative law judge erred in determining that the opinion of Dr. Goldblatt, as autopsy prosector, was not entitled to deference, because his diagnosis of complicated pneumoconiosis was based on microscopic findings rather than on gross examination, and erred in rejecting Dr. Perper's opinion because the record did not substantiate a finding of hypoxia upon which Dr. Perper's opinion was partly based. Rather, claimant contends that, along with Dr. Goldblatt's opinion, the administrative law judge should have credited Dr. Perper's opinion because there is, in fact, evidence of record supporting a diagnosis of hypoxia. Claimant further contends that the administrative law judge erred in crediting the opinions of Drs. Mendelow, Tomashefski, Griffin and Bush, that claimant did not have

complicated pneumoconiosis, as reasoned, without explaining why he found them reasoned, and crediting them because of their numerical weight.

In finding that complicated pneumoconiosis was not established, the administrative law judge accorded greater weight to the pathology opinions of Drs. Bush, Mendelow and Tomashefski, who agreed that the lesions seen on the miner's autopsy slides were too small to meet the requirements of complicated pneumoconiosis and that the lesion seen was a subpleural scar, not progressive massive fibrosis, and because the miner's x-rays did not reveal complicated pneumoconiosis. While acknowledging that Dr. Goldblatt, the autopsy prosector found complicated pneumoconiosis, the administrative law judge did not find his opinion entitled to any greater weight because he, like the pathologists, relied on microscopic, not gross examination, of the lung tissue. This was rational. *See Urganites v. BethEnergy Mines*, 17 BLR 1-20, 1-23 (1992). Further, the administrative law judge accorded less weight to the opinion of Dr. Perper, who diagnosed lesions consistent with progressive massive fibrosis because he was the only pathologist to make a diagnosis of hypoxia and the record was devoid of evidence of hypoxia. While, as claimant and the Director contend, and as our review of the record shows, the record was not devoid of evidence that the miner suffered from hypoxia, *i.e.*, the death certificate and the report of Dr. Tomashefski, we cannot say that the administrative law judge erred in rejecting Dr. Perper's opinion because he found that the majority of the other pathologists did not diagnose hypoxia. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-380 n.4 (1983).

Moreover, claimant has not shown how the diagnosis of hypoxia in the face of the other evidence supports a finding of complicated pneumoconiosis or death due to pneumoconiosis.

Accordingly, the administrative law judge rationally found that the evidence failed to establish complicated pneumoconiosis and properly concluded, therefore, that claimant was not entitled to the presumption of death due to pneumoconiosis provided by Section 718.304, based on a finding of complicated pneumoconiosis. 20 C.F.R. §§718.205(c)(3); 718.304; *see Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991).

Next, claimant contends that the administrative law judge erred in according greater weight to the opinions of the physicians who found that the miner's death was not due to pneumoconiosis because they were better reasoned, without explaining why he found them better reasoned.

In finding that the evidence failed to establish death due to pneumoconiosis, the administrative law judge found that the opinion of Dr. Goldblatt's opinion was not well-reasoned because Dr. Goldblatt failed to explain how pneumoconiosis contributed to the miner's death. The administrative law judge accorded greater weight to the opinions of Drs. Bush, Mendelow, Cagle, and Tomashefski, who, while noting claimant's extensive coal dust exposure, nevertheless, concluded that the objective medical evidence indicated that the pulmonary impairment which caused the miner's death was due to cigarette smoking and was not in any way caused, contributed to, or hastened by the miner's pneumoconiosis. This was rational. *See Lukosevicz, supra; Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988).

We agree with the Director that a diagnosis of the existence of complicated pneumoconiosis entitles claimant to the irrebuttable presumption of death due to pneumoconiosis at Section 718.304 and that a doctor is not required to explain how complicated pneumoconiosis contributed to death. In this case, however, the administrative law judge found that the evidence, on whole, did not establish the existence of complicated pneumoconiosis. The administrative law judge was not, therefore, rejecting Dr. Goldblatt's opinion of complicated pneumoconiosis because he did not explain how it contributed to death; but, rather the administrative law judge rejected Dr. Goldblatt's opinion because he did not explain how the miner's respiratory condition, not complicated pneumoconiosis, caused the miner's death. This was permissible. *See Clark, supra.*<sup>3</sup>

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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<sup>3</sup> We also reject the Director's agreement that the administrative law judge erred in failing to consider the opinion of Dr. Rizkalla regarding the existence of complicated pneumoconiosis and death due to pneumoconiosis inasmuch as the administrative law judge's Decision and Order shows that he considered and fully discussed that opinion. *See* Decision and Order at 5-6, 11-12.

REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge