

BRB No. 05-0947 BLA

DOROTHY M. CORNELIUS)	
(Widow of CLYDE R. CORNELIUS))	
)	
Claimant-Respondent)	
)	
v.)	
)	
PITTSBURG & MIDWAY COAL MINING)	
COMPANY)	DATE ISSUED: 07/27/2006
)	
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 on Remand of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

John W. Hargrove (Bradley, Arant, Rose & White, LLP), Birmingham, Alabama, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand (03-BLA-5015) of Administrative Law Judge Richard A. Morgan 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). This case has been before the Board previously. In the original decision, Administrative Law Judge Robert J. Lesnick found, in accordance with the parties' stipulation, twenty-five years of coal mine employment and that employer was the proper responsible operator. Decision and Order dated September 29, 2003. Considering entitlement pursuant to 20 C.F.R. Part 718, the administrative law judge concluded that claimant had established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R.

§§718.202(a)(2), (4) and 718.203.¹ Decision and Order dated September 29, 2003. Administrative Law Judge Lesnick further found that the evidence of record was sufficient to establish the presence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, thus giving claimant the benefit of the irrebuttable presumption that the miner's death was due to pneumoconiosis. Decision and Order dated September 29, 2003. Accordingly, benefits were awarded.

On appeal, the Board vacated the administrative law judge's findings pursuant to 20 C.F.R. §718.304 and remanded the case for reconsideration of the relevant evidence; the Board further directed that if the administrative law judge determined that entitlement was not established pursuant to Section 718.304, he should determine whether the evidence is sufficient to establish that the miner's death was due to pneumoconiosis. *Cornelius v. Pittsburg & Midway Coal Mining Co.*, BRB No. 04-0162 BLA (September 30, 2004)(unpublished).

On remand, Administrative Law Judge Richard A. Morgan found the autopsy evidence sufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304.² Decision and Order on Remand at 4-9. The administrative law judge concluded that as a consequence, claimant was entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(3). Decision and Order on Remand at 9. Accordingly, benefits were awarded.

In the instant appeal, employer contends that the administrative law judge erred in finding the existence of complicated pneumoconiosis established. Claimant has not filed a response brief in this case. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹ Claimant, the miner's widow, filed her claim for survivor benefits with the Department of Labor on May 17, 2001. Director's Exhibit 4.

² On remand, the case was assigned to Administrative Law Judge Richard A. Morgan as Administrative Law Judge Robert J. Lesnick was no longer with the Office of Administrative Law Judges.

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 725.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis 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 a miner's death if it hastens the miner's death. *See* 20 C.F.R. §718.205(c)(5); *see also Bradberry v. Director, OWCP*, 117 F.3d 1361, 21 BLR 2-166 (11th Cir. 1997).³

After consideration of the administrative law judge's Decision and Order on Remand, 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 and contains no reversible error. Considering the relevant evidence of record, the administrative law judge acted within his discretion, as fact-finder, in concluding that the evidence was sufficient to establish the existence of complicated pneumoconiosis thus giving claimant the benefit of the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(3). *See Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Initially, we disagree with employer's contentions that in considering the medical opinion evidence the administrative law judge violated the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a).⁴ Contrary to employer's contentions, the administrative law judge fully discussed the relevant evidence of record and articulated a

³ This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit as the miner was last employed in the coal mine industry in Alabama. *See Slatick v. Director, OWCP*, 698 F.2d 433, 1 BLR 2-49 (11th Cir. 1983); *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibits 1, 7.

⁴ The Administrative Procedure Act requires each adjudicatory decision to include a statement of "findings and conclusions, and the reasons or bases therefore, on all material issues of fact, law or discretion presented on the record..." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a).

rational reason for his credibility determinations therefrom. *See Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); Decision and Order on Remand at 4-9.

With respect to the administrative law judge's determination that claimant established the existence of complicated pneumoconiosis and that the miner's death was due to pneumoconiosis, the administrative law judge found that Dr. Guerry-Force's opinion, that the miner suffered from complicated pneumoconiosis, was entitled to the greatest weight. Decision and Order on Remand at 5, 8-9; Director's Exhibit 11. The administrative law judge further found that the contrary opinions of Drs. Caffrey and Branscomb were entitled to less probative weight with respect to the existence of complicated pneumoconiosis. Decision and Order on Remand at 5, 8-9; Director's Exhibit 13; Employer's Exhibits 4, 5. As employer does not challenge the administrative law judge's specific credibility determinations with respect to the medical opinion evidence, the administrative law judge's decision to accord less weight to the opinions of Drs. Caffrey and Branscomb and greater weight to the opinion of Dr. Guerry-Force is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Employer argues that the administrative law judge erred in finding the existence of complicated pneumoconiosis established as the opinion of Dr. Guerry-Force is insufficient to meet the requirements of 20 C.F.R. §718.304 since the physician does not diagnose "massive lesions" in her autopsy report. Employer's Brief at 11-12, 14-15. We disagree. A finding of complicated pneumoconiosis can be established by autopsy where the findings establish the existence of "massive lesions." *See* 20 C.F.R. §718.304(b); *Gruller v. Bethenergy Mines, Inc.*, 16 BLR 1-3 (1991); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Lohr v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-1264 (1984).

In the instant case, Dr. Guerry-Force, as employer correctly asserts, did not specifically diagnose "massive lesions." However, the administrative law judge, in his role as fact-finder, rationally determined that the autopsy, supplemental report and deposition testimony of Dr. Guerry-Force adequately described the condition comprehended by the regulatory term "massive lesions." *See* 20 C.F.R. §718.304(b); *Gruller*, 16 BLR 1-3; Director's Exhibit 11; Decision and Order on Remand at 8-9. The record clearly indicates that Dr. Guerry-Force stated that the 1.2 centimeter lesion that she observed constituted complicated pneumoconiosis under the ILO pulmonary lung classification for complicated, larger nodules. *See* Director's Exhibit 11, Deposition Transcript at 10-11. The record also contains the letter sent to Dr. Guerry-Force from the United States Department of Labor's Employment Standards Administration (ESA) describing what constitutes complicated pneumoconiosis. *See* Director's Exhibit 11. Dr. Guerry-Force indicated that her diagnosis of complicated pneumoconiosis was in accordance with the guidelines provided to her by ESA, which describe the disease by using the term "massive lesions." *See* Director's Exhibit 11. We therefore affirm the

administrative law judge's finding that the opinion of Dr. Guerry-Force was sufficient to establish the existence of complicated pneumoconiosis, as it is supported by substantial evidence. *See* 20 C.F.R. §718.304(b); *Gruller*, 16 BLR 1-3; *Neeley*, 11 BLR 1-85; *Lohr*, 6 BLR 1-1264.

Employer further asserts that entitlement is precluded in this case as the miner died due to advanced heart disease unrelated to any lung problems.⁵ Specifically, employer contends that the regulation at 20 C.F.R. §718.205(c)(4) precludes benefits as the regulation, in pertinent part, clearly states:

However, survivors are not eligible for benefits where ... the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence established that pneumoconiosis was a substantially contributing cause of death.

20 C.F.R. §718.205(c)(4). Contrary to employer's assertion, Section 718.205(c)(4) does not apply to Section 718.304. The irrebuttable presumption of death due to pneumoconiosis found at Section 718.304 is controlling despite the fact that the death of the miner is caused by a condition other than pneumoconiosis. *See Sumner v. Blue Diamond Coal Co.*, 12 BLR 1-74 (1988).

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, we affirm the administrative law judge's determination that claimant has established the existence of complicated pneumoconiosis and is therefore entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis as it is supported by substantial evidence and is in accordance with law.⁶ *See* 20 C.F.R. §718.205(c)(3); *Bradberry*, 117 F.3d 1361, 21 BLR 2-166; *Gruller*, 16 BLR 1-3.

⁵ The death certificate indicates that the miner died due to congestive heart failure with anemia being a contributing cause to the death. Director's Exhibit 10.

⁶ As employer does not challenge the administrative law judge's weighing of the contrary evidence pursuant to 20 C.F.R. §718.304 as required by the holding in *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*), it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order on Remand at 9.

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

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge