

BRB No. 05-0965 BLA

MARY SANTELLI)
(Widow of JACK C. SANTELLI))
)
 Claimant-Respondent)
)
 v.)
)
 U.S. STEEL MINING COMPANY, LLC)
) DATE ISSUED: 07/14/2006
 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 Awarding Survivor's Benefits and the Order on Reconsideration of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Howard G. Salisbury, Jr. (Kay Casto & Chaney PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Survivor's Benefits and the Order on Reconsideration (04-BLA-6019) of Administrative Law Judge Thomas M. Burke 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

¹ Claimant is Mary Santelli, the widow of Jack C. Santelli, the miner. The miner died on October 3, 2002. Director's Exhibit 11. During his life, the miner had filed two applications for benefits, and he was awarded benefits in a Decision and Order issued by Administrative Law Judge John C. Holmes on July 22, 1991. Director's Exhibit 2.

The administrative law judge noted that the only issues presented were whether the miner's pneumoconiosis arose out of his coal mine employment, and whether the miner's pneumoconiosis hastened his death.² The administrative law judge found the evidence sufficient to establish that the miner's pneumoconiosis arose out of his coal dust exposure and that the miner's pneumoconiosis was a substantially contributing cause or factor leading to his death, and the administrative law judge therefore awarded benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Reconsideration, which the administrative law judge granted. The administrative law judge modified his Decision and Order to reflect that employer is ordered to pay claimant's benefits.

On appeal, employer asserts that the administrative law judge erred in relying on Dr. Perper's opinion to find that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Neither claimant, nor the Director, has responded to employer's appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 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).

The instant survivor's claim was filed in 2003. In order to establish that the miner's death was due to pneumoconiosis, claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of his coal mine employment, and that the miner's death was due to pneumoconiosis. The regulations provide that death will be considered to be "due to pneumoconiosis" where medical evidence establishes that the miner's death was due to pneumoconiosis; where pneumoconiosis was a "substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis"; or where the presumption contained in 20 C.F.R. §718.304 is applicable. 20 C.F.R. §718.205. In considering whether the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), the administrative law judge noted that all of the physicians of record opined that the immediate cause of the miner's death was his chronic renal failure, and that Drs. Bush and Castle concluded that the miner's death was unrelated to any respiratory disease, while Dr. Perper opined that the miner's coal workers' pneumoconiosis aggravated a cardiac problem at the time of his death. Decision and Order at 7. The

² The administrative law judge noted that employer had stipulated to thirty-two years of coal mine employment and the presence of pneumoconiosis. Decision and Order at 2.

administrative law judge gave greater weight to the opinion of Dr. Perper regarding the cause of death, finding it to be persuasive, and finding that Dr. Perper possessed superior pathological qualifications.³

After considering the administrative law judge's findings, the arguments raised on appeal, and the evidence of record, we hold that the administrative law judge's Decision and Order is supported by substantial evidence and therefore must be affirmed. The administrative law judge has provided rational bases for relying on Dr. Perper's opinion regarding the cause of death. The administrative law judge, who is charged with evaluating the credibility of the evidence and resolving conflicts in the evidence, permissibly accorded Dr. Perper's opinion greatest weight. *See Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149(1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985).

Moreover, since employer's appeal is essentially a request for the Board to reweigh the evidence, which exceeds the Board's scope of review, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), we reject this request.

³ We affirm the administrative law judge's finding that the presumption contained in 20 C.F.R. §718.304 is inapplicable in this case, as this finding is not challenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Accordingly, we affirm the administrative law judge's Decision and Order Awarding Survivor's Benefits and the Order on Reconsideration.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge