BRB No. 98-1242 BLA

BESSIE M. BRAGG (Widow of RONALD F. BRAGG)	)	
Claimant-Petitioner	)	
v.	)	
SEWELL COAL COMPANY	)	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 on Remand - Denying Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

G. Todd Houck, Mullens, West Virginia, for claimant.

Kathy L. Snyder (Jackson & Kelly), Morgantown, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order on Remand - Denying Benefits (93-BLA-0610) of Administrative Law Judge Michael P. Lesniak on a survivor's claim[1] filed pursuant

[1] Claimant, Bessie M. Bragg, filed a survivor's claim for benefits on June 11, 1992. Director's Exhibit 1. Mrs. Bragg is the widow of Ronald F. Bragg, the miner, who died on February 2, 1992. Director's Exhibit 6A.

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 is before the Board for the third time. Adjudicating this claim pursuant to 20 C.F.R. Part 718, Administrative Law Judge Robert S. Amery credited the parties' stipulation that the miner worked "at least" fifteen years in qualifying coal mine employment, and found that the miner suffered from pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(2) and (a)(4), 718.203(b), and that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were awarded. Employer timely appealed, and the Board affirmed as unchallenged Administrative Law Judge Amery's findings under 20 C.F.R. §718.202(a)(1) and (a)(3), but vacated his findings under 20 C.F.R. §§718.202(a)(2), (a)(4), and 718.205(c) because he failed to provide an adequate rationale for according greater weight to the autopsy prosector's opinion over those of the consulting pathologists. *Bragg v. Sewell Coal Co.*, BRB No. 94-3848 BLA (Jun. 29, 1995)(unpub.).

On remand, Administrative Law Judge Amery found that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(4), and that the miner's pneumoconiosis substantially contributed to his death pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were again awarded. Employer appealed, and the Board affirmed Administrative Law Judge Amery's determinations under 20 C.F.R. §§718.202(a) and 718.205(c), and therefore, affirmed the award of benefits. *Bragg v. Sewell Coal Co.*, BRB No. 96-0394 BLA (Aug. 30, 1996)(unpub.). Employer appealed, and the United States Court of Appeals for the Fourth Circuit, within whose appellate jurisdiction this case arises, vacated the Board's decision on the basis that, by merely citing to the fact that the autopsy prosector had the opportunity to perform a gross examination of the miner's body, Administrative Law Judge Amery had failed to adequately explain his reasons for crediting the opinion of the autopsy prosector over those of the consulting pathologists. Accordingly, the case was remanded for reconsideration. *Sewell Coal Co. v. Bragg*, No. 96-2512 (4th Cir. Jul. 11, 1997)(unpub.).

On remand, the case was assigned to Administrative Law Judge Michael P. Lesniak (administrative law judge), who found that, although claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and (a)(4), she failed to establish that pneumoconiosis hastened or contributed to the miner's death under Section 718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in evaluating the medical evidence relevant to the cause of death and erred in finding that the miner's death

was not due to pneumoconiosis pursuant to Section 718.205(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, as party-in-interest, 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 the 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Contrary to claimant's argument, the administrative law judge was not precluded from considering the opinions of Drs. Hansbarger, Kleinerman, Caffrey, Naeye and Bush on the issue of whether death contributed to pneumoconiosis solely because they did not diagnose the existence of coal workers' pneumoconiosis. First, we note, contrary to claimant's argument, that the administrative law judge found that these physicians did diagnose pneumoconiosis as defined by the Act. 20 C.F.R. §718.201. *See Barber v. U.S. Steel Mining Co., Inc.*, 43 F.3d 899, 901, 19 BLR 2-61, 2-66 (4th Cir. 1995); *Daugherty v. Dean Jones Coal Co.*, 895 F.2d 130, 132, 13 BLR 2-134, 2-140 (4th Cir. 1989); *Bueno v. Director, OWCP*, 7 BLR 1-337, 1-340 (1984); Employer's Exhibits 2, 3, 6, 11 at 27, 13 at 8; Decision and Order on Remand at 5-7. In addition, each of these physicians unequivocally stated that pneumoconiosis as defined by the Act could not have contributed to nor hastened the miner's death. *See Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*,

113 S.Ct. 969 (1993).[2]

Further, contrary to claimant's argument, the administrative law judge permissibly credited the opinion of Dr. Fino that the miner's death was unrelated to coal mine employment based on his superior qualifications, *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985), and his extensive review of the miner's medical records. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Hunley v. Director, OWCP*, 8 BLR 1-323 (1985).

---

[2] Claimant additionally argues that the administrative law judge mischaracterized the opinions of employer's physicians because the administrative law judge found that these physicians diagnosed the existence of pneumoconiosis when, in fact, they did not. Claimant argues, therefore, that because these physicians did not diagnose the existence of coal workers' pneumoconiosis, their opinions are not probative on the issue of whether the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). We note that a physician's failure to diagnose "coal workers' pneumoconiosis" does not preclude that medical opinion from establishing the existence of pneumoconiosis if the physician found evidence of "a chronic dust disease of the lung and its sequelae, including respiratory or pulmonary impairments, arising out of coal mine employment," or any one of the pulmonary diseases included in the definition of pneumoconiosis as set forth in Section 718.201. 20 C.F.R. §718.201. Nevertheless, we need not address claimant's contention inasmuch as the administrative law judge properly found that, the medical evidence established that pneumoconiosis as defined by the Act neither contributed to nor hastened the miner's death under Section 718.205(c).

Likewise, contrary to claimant's argument, the administrative law judge properly considered the respective medical expertise of each physician when assessing the weight to accord each opinion,[3] *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 536, 21 BLR 2-323, 2-341 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275 (4th Cir. 1998), and reasonably found the opinions of Drs. Hansbarger, Kleinerman, Caffrey, Naeye, Hutchins, Bush, and Fino more persuasive because these opinions that the miner's pneumoconiosis did not contribute to his death were well documented, *see Clark, supra*; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987), well reasoned, *see Lucostic, supra*, and based on a microscopic examination of the autopsy slides, *see King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985). Decision and Order on Remand at 8-9. Hence, we affirm the administrative law judge's determination that the aforementioned opinions outweighed those of Drs. Rasheed, Ranavaya, Andrada, and Gaziano pursuant to Section 718.205(c).

Finally, claimant asserts that the opinion of Dr. Rasheed, the autopsy prosector, which opined that coal workers' pneumoconiosis contributed to the miner's death, as corroborated by Drs. Andrada, Gaziano, and Ranavaya, was entitled to dispositive weight under Section 718.205(c). Director's Exhibit 6A; Claimant's Exhibit 1; Employer's Exhibit 12. Inasmuch as claimant's argument and recitation of evidence favorable to her case amount to a request for the Board to reweigh the evidence or to substitute its inferences for those of the administrative law judge, which the Board is not empowered to do, we reject claimant's contention. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988). Moreover, the autopsy prosector may be found to possess no advantage over a consulting physician, where both experts are called upon to interpret the same primary exhibits in the form of histological

[3] Drs. Rasheed, Kleinerman, Bush, Hutchins, Naeye, Caffrey, and Hansbarger are Board-certified in pathology. Director's Exhibit 6A; Employer's Exhibits 1-6, 11, 12. Dr. Fino is Board-certified in internal and pulmonary medicine. Employer's Exhibits 9, 13. Dr. Gaziano is Board-certified in internal and chest disease medicine. Director's Exhibit 6B. Dr. Ranavaya is licensed to practice medicine, but his curriculum vitae does not indicate any Board-certifications. Claimant's Exhibit 1. Dr. Andrada's medical expertise is not of record.

slides. *See Urgolites v. Bethenergy Mines, Inc.*, 17 BLR 1-20 (1992); *Amax Coal Co. v. Director, OWCP [Rehmel]*, 993 F.2d 600, 602, 17 BLR 2-91, 2-94 (7th Cir. 1993); *Cadwallader v. Director, OWCP*, 7 BLR 1-879, 1-882 (1985). Here, the administrative law judge specifically noted that he did not place any greater weight on Dr. Rasheed's opinion simply because she performed the autopsy inasmuch as she admitted at deposition that the reviewing pathologists were able to see everything she saw from doing the autopsy. Decision and Order at 8. *See Urgolites*, *supra*. We, therefore, affirm the administrative law judge's finding that Dr. Rasheed's opinion was not entitled to any greater weight than those of the consulting pathologists. The administrative law judge therefore permissibly determined that the evidence did not establish that the miner's pneumoconiosis substantially contributed to his death. Thus, we affirm the administrative law judge's finding that claimant failed to establish death due to pneumoconiosis pursuant to Section 718.205(c). *See Shuff*, *supra*; *Dillon*, *supra*; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

Accordingly, the Decision and Order on Remand - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge