

BRB No. 99-0928 BLA

DOROTHY HUNTZINGER)	
(Widow of ELMER HUNTZINGER))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Lawrence P. Donnelly, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Rita Roppolo (Henry L. Solano, 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: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-1015) of Administrative Law Judge Lawrence P. Donnelly awarding benefits on a miner's claim and denying 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).¹ The administrative law judge credited the miner with fifteen years of

¹Claimant is Dorothy Huntzinger, the miner's widow. The miner, Elmer Huntzinger, filed a claim for benefits on June 29, 1973 which was denied on May 28, 1987 by Administrative Law Judge Reno E. Bonfanti. Director's Exhibit 22. The

qualifying coal mine employment, as stipulated by the parties, and determined that this case involves a request for modification of the denial of the miner's duplicate claim. The administrative law judge found that because the Director, Office of Workers' Compensation Programs (the Director), now stipulates that the miner had pneumoconiosis, an element of entitlement which was not previously established, claimant demonstrated a material change in conditions pursuant to 20 C.F.R. §725.309. The administrative law judge further found that the newly submitted evidence established a change in conditions pursuant to 20 C.F.R. §725.310, and that the evidence supported a finding of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c)(1), (c)(4). Accordingly, benefits were awarded on the miner's claim. The administrative law judge then found that claimant 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 the survivor's claim.

On appeal, claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish death due to

miner filed a second claim on June 17, 1993, which was withdrawn on September 28, 1994. Director's Exhibit 22. The miner filed the instant claim on March 17, 1995, which was ultimately denied when the Board affirmed the Decision and Order denying benefits of Administrative Law Judge Ralph A. Romano. Director's Exhibits 43, 49; *Huntzinger v. Director, OWCP*, BRB No. 96-1025 BLA (Apr. 14, 1997)(unpub.). The miner filed a petition for modification on July 25, 1997. Director's Exhibit 50. The miner died on August 28, 1997 and claimant filed a survivor's claim for benefits on October 6, 1997. Director's Exhibits 57, 58.

pneumoconiosis pursuant to Section 718.205(c). The Director responds, urging affirmance of the denial of benefits on the survivor's claim.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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under Part 718 based on a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that death was due to, or hastened by, pneumoconiosis. See 30 U.S.C. §901(a); 20 C.F.R. §§718.1, 718.205, 725.201; *Lukosevicz v. Director, OWCP*, 888 F. 2d 1001, 13 BLR 2-100 (3d Cir. 1989); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

Claimant first contends that the administrative law judge erred in weighing Dr. Miller-Schaeffer's opinion pursuant to Section 718.205(c). Claimant's Brief at 7-12.

In a report dated September 11, 1998, Dr. Miller-Schaeffer opined that the direct cause of the miner's death was his brain stem stroke, but that anthracosilicosis was a significant contributing factor leading to the hastening of his death. Claimant's Exhibits 4, 5. Dr. Miller-Schaeffer further stated that the miner "did have respiratory failure requiring mechanical intubation and ventilation early in his hospital course (*sic*). The anthracosilicosis is a contributing factor." *Id.* In listing the support for her conclusions, Dr. Miller-Schaeffer stated that the miner's past medical history included "a history of CAD, S/P MI, black lung, hypertension." *Id.* She also stated that according to her discharge summary, "there was no significant cardiac

²We affirm the administrative law judge's findings that the miner had pneumoconiosis, regarding the length of the miner's coal mine employment and pursuant to 20 C.F.R. §§718.204(b), (c)(1), (c)(4), 725.309, 725.310 and the award of benefits on the miner's claim as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

disease” but that she did “not have a copy of that or previous chest x-rays to give full results of his actual pulmonary status.” *Id.*

In light of the fact that Dr. Miller-Schaeffer indicated explicitly that she did not have the documents upon which she based her opinion before her, the administrative law judge acted within his discretion in finding Dr. Miller-Schaeffer’s opinion entitled to no weight because it is undocumented. Decision and Order at 15; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Consequently, we reject claimant’s contention that the administrative law judge’s weighing of Dr. Miller-Schaeffer’s opinion is not supported by substantial evidence.³

Claimant next contends that the administrative law judge did not provide an adequate basis for his discrediting of Dr. Kraynak’s opinion and that the administrative law judge ignored Dr. Kraynak’s December 24, 1998 opinion. Claimant’s Brief at 13-16. In an opinion dated September 17, 1998, Dr. Kraynak stated that “[f]rom reviewing the hospital records it is clear that brain stem stroke, coal workers’ pneumoconiosis, coronary artery disease were diagnosed. He was short of breath in the hospital. Physical examination in the hospital showed diminished breath sounds.” Claimant’s Exhibit 2. Dr. Kraynak concluded that “[i]t is clear from reviewing all of the records that coal workers’ pneumoconiosis was a substantial contributing factor in Mr. Huntzinger’s death. He would have survived longer absent coal workers’ pneumoconiosis. He would have been in a position to better fight off his multiple disease entities if he was able to adequately oxygenate his blood.” *Id.* Dr. Kraynak also submitted a letter, dated December 24, 1998, in which he stated his disagreement with Dr. Michos’s opinion that the miner’s respiratory failure was the result of his multiple strokes involving the brain stem, which is the part of the brain responsible for breathing. Director’s Exhibits 65, 66, 69; Claimant’s Exhibit 9.

³Inasmuch as the administrative law judge provided a valid alternative rationale for discrediting Dr. Miller-Schaeffer’s opinion, we need not address the validity of the other grounds upon which the administrative law judge relied. See *Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988); *Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

In setting forth the medical opinion evidence of record, the administrative law judge summarized both of Dr. Kraynak's opinions concerning the cause of the miner's death. *Id.*; Decision and Order at 7-8, 10. Subsequently, when weighing the medical opinions relevant to the cause of the miner's death, the administrative law judge acted within his discretion in finding that Dr. Kraynak's opinion was not reasoned, as Dr. Kraynak failed to explain the conflict between his conclusion that hypoxemia related to pneumoconiosis contributed to the miner's stroke and subsequent death and the earlier reports in which Dr. Kraynak did not refer to hypoxemia as a significant condition. Decision and Order at 16; Claimant's Exhibit 2; *Lafferty, supra*; *Clark, supra*. As a result, we reject claimant's contentions that the administrative law judge did not provide a permissible rationale for his weighing of Dr. Kraynak's opinion.⁴

Claimant next contends that the administrative law judge did not provide adequate reasons for his discrediting of Dr. Terlingo's opinion. Claimant's Brief at 18-19. In a report dated October 1, 1998, Dr. Terlingo stated that the miner's medical history included hypertension, coronary artery disease, ASCVD, black lung, myeloproliferative disorder and degenerative joint disease and stated that a pulmonary function test done in 1994 showed airflow limitations and that a "peak flow" done in 1996 showed significant reduction in the miner's flow volume. Claimant's Exhibits 7, 8. Dr. Terlingo stated that poor airflow leads to hypoxia which, in conjunction with coronary artery disease, increased the risk of myocardial infarction or stroke. *Id.* Dr. Terlingo concluded that it is her opinion that black lung was a significant co-morbid or contributing factor to the miner's medical condition. *Id.*

⁴Inasmuch as the administrative law judge set forth a valid basis for discrediting Dr. Kraynak's opinion, we need not address claimant's contentions regarding the other bases identified by the administrative law judge. *See Searls, supra*; *Kozele, supra*.

The administrative law judge properly found that the 1994 and 1996 objective studies, which are the basis of Dr. Terlingo's finding that the miner had hypoxia, are not in the record. Decision and Order at 16; Claimant's Exhibits 7, 8. The administrative law judge further properly found that, although Dr. Terlingo mentioned an x-ray indicating increased interstitial fibrosis, she did not provide the basis for her finding that the miner had "black lung." *Id.* The administrative law judge then rationally concluded that Dr. Terlingo's opinion is undocumented and, as a result, cannot establish that the miner's death was due to pneumoconiosis. *Id.; Lafferty, supra; Clark, supra.* Consequently, we reject claimant's contention that the administrative law judge did not provide an adequate rationale for his weighing of Dr. Terlingo's opinion.⁵

Finally, claimant contends that the administrative law judge erred in failing to consider the death certificate and the miner's hospital records. Claimant's Brief at 20. In his Decision and Order, the administrative law judge lists the cause of death as certified to by Dr. Miller-Schaeffer and discusses Dr. Miller-Schaeffer's medical opinions. Decision and Order at 4, 7; Director's Exhibit 59; Claimant's Exhibits 4, 5. Because the administrative law judge rationally assigned Dr. Miller-Schaeffer's opinion regarding the cause of the miner's death no weight and the death certificate does not contain any documentation that would alter the administrative law judge's finding, any error in the administrative law judge's failure to specifically weigh the death certificate is harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Further, the administrative law judge also summarized the records of the miner's hospital stay subsequent to his suffering his stroke. Decision and Order at 6; Director's Exhibit 60. Because these records do not include an opinion as to the cause of the miner's death, they do not support a finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205. Consequently, we reject claimant's contention that the administrative law judge erred in failing to weigh the death certificate and the miner's hospital records and affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) and the denial of benefits on the survivor's claim.

⁵Inasmuch as the administrative law judge set forth a valid basis for discrediting Dr. Terlingo's opinion, we need not address claimant's contentions regarding the other bases identified by the administrative law judge. *See Searls, supra; Kozele, supra.*

Accordingly, the administrative law judge's Decision and Order Awarding Miner's Benefits and Denying the Survivor's Claim is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge