

BRB No. 99-0996 BLA

BERNICE LOCKHART
(Widow of HOWARD E. LOCKHART)

Claimant-Petitioner

v.

CLINCHFIELD COAL COMPANY

Employer-
Respondent

DIRECTOR, OFFICE OF
WORKERS'
COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT
OF LABOR

DATE ISSUED:

DECISION AND ORDER

Party-in-Interest

Appeal of the Decision and Order-Denying Benefits of John C. Holmes, Administrative Law Judge, United States Department of Labor.

Lawrence L. Moise, III (Vinyard & Moise), Abingdon, Virginia, for claimant.

Timothy Gresham (Penn, Stuart, Eskridge & Jones), Abingdon, Virginia, for employer.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (98-BLA-1130) of Administrative Law Judge John C. Holmes 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).¹ After noting that the miner filed a claim for benefits that was finally denied in 1987, the administrative law judge found that the evidence established that the miner suffered from simple coal workers' pneumoconiosis, but that claimant failed to establish that pneumoconiosis substantially contributed to the miner's death pursuant to 20 C.F.R. §718.205(c)(2). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge improperly weighed the evidence and applied an incorrect legal standard in considering the medical evidence. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has indicated that he will not participate in this 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 supported by substantial evidence, is rational, and is in accordance with applicable law. 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).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718 in a claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment, and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that evidence demonstrating that pneumoconiosis hastened the miner's death establishes that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to Section 718.205(c)(2). See *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

¹Claimant is the surviving spouse of the miner, Howard E. Lockhart, who died on November 14, 1996. The death certificate indicates that the immediate cause of death was acute myocardial infarct and arteriosclerosis. Director's Exhibit 11.

In determining whether pneumoconiosis hastened the miner's death, the administrative law judge found the opinions of Drs. Caffrey, Fino, Kleinerman and Tomashefski to be credible as their opinions are thorough and well analyzed, and the physicians are experts in their respective fields. Decision and Order at [10](unpaged). The administrative law judge found that these physicians disagreed with Dr. Stefanini's opinion that the miner had suffered from a pulmonary impairment at the time of his death, and that their opinions were supported by the pulmonary function studies of record. *Id.* at [11]. The administrative law judge additionally found that Dr. Stefanini's opinion was not credible as it was based only on partial medical evidence, namely the autopsy of the miner's lungs only, and found the physician's opinion, that because the miner suffered from pneumoconiosis, he must have had a pulmonary impairment which constituted a significant contribution to death, to be speculative. *Id.* Regarding Dr. Barker, the administrative law judge found the treating physician's opinions to be inconsistent and his opinion concerning the contribution of pneumoconiosis in the miner's death "somewhat contrived." *Id.* at [10]. The administrative law judge found that Dr. Kleinerman's opinion, that Dr. Barker's statements regarding the role of pneumoconiosis in the miner's death were incorrect because they were based on the report of a limited autopsy, was persuasive. *Id.* With respect to Dr. Perper's opinion, that coal workers' pneumoconiosis was a substantial contributory cause of death through direct and indirect pulmonary hypoxia, the administrative law judge found that it was countered by the opinions of Drs. Fino and Kleinerman that the objective tests failed to demonstrate hypoxia. *Id.* Lastly, the administrative law judge attached "little significance" to the death certificate prepared by Dr. Vermillion. *Id.* at [11]. The administrative law judge concluded that the evidence indicates that the miner died due to complications of end-stage renal failure, probable myocardial infarct and arteriosclerosis, and that the miner's pulmonary condition was not demonstrated to be significantly impaired prior to the worsening of his renal disease. *Id.* at [12]. The administrative law judge further found that the evidence demonstrated that any minimal pulmonary impairment that the miner suffered from was due to his cigarette smoking and that the miner's death was not hastened by his minimal pneumoconiosis. *Id.*

On appeal, claimant contends that the administrative law judge should have accorded determinative weight to the opinions of Drs. Barker, Perper and Stefanini, which claimant contends are reasoned and documented. Contrary to claimant's contention, the administrative law judge rationally relied on the expertise of Drs. Caffrey, Fino, Kleinerman and Tomashefski in according greater weight to their opinions.² See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*);

²The administrative law judge did not specifically list the credentials of each of

Dillon v. Peabody Coal Co., 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Furthermore, the administrative law judge permissibly found these opinions to be well reasoned and documented, in that they noted the absence of any indication that the miner received treatment for breathing problems and discussed the miner's normal test results. See *Clark, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). In considering the contrary opinions of Drs. Barker, Perper, and Stefanini, the administrative law judge permissibly found that the physicians' opinions were not supported by the objective testing in the record, and thus, were insufficient to meet claimant's burden of proving that pneumoconiosis hastened the miner's death. See *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); see also *Grizzle v. Pickands Mather Coal Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993). Thus, we affirm the administrative law judge's weighing of the evidence pursuant to Section 718.205(c)(2).

Claimant next contends that the administrative law judge applied an incorrect legal standard in that he considered whether claimant established whether the miner suffered from a pulmonary impairment. We disagree with claimant's characterization of the administrative law judge's findings. The administrative law judge's discussion of the issue of pulmonary impairment was based upon the contradictory medical findings made by the physicians of record. Employer's

the physicians, however, the record indicates that Dr. Caffrey is a Fellow of the American Board of Anatomical Pathology and the American Board of Clinical Pathology, Employer's Exhibit 1, Dr. Fino is a Diplomate of the American Board of Internal Medicine with a subspecialty in Pulmonary Diseases, Employer's Exhibit 27, Dr. Kleinerman is certified by the American Board of Pathology in Pathologic Anatomy and Clinical Pathology, Employer's Exhibit 5, and Dr. Tomashefski is certified by the American Board of Pathology in Anatomic and Clinical Pathology, Employer's Exhibit 3. The record does not contain the credentials of Drs. Barker, Perper and Stefanini.

experts opined that claimant's pulmonary impairment was of such a minimal level that pneumoconiosis did not hasten the miner's death, and claimant's physicians opined otherwise. In order to adequately consider the validity of the reasoning behind the differing opinions, the administrative law judge necessarily had to engage in a discussion of the degree of the miner's pulmonary impairment. Ultimately, the administrative law judge acted within his discretion in according greater weight to the opinions of Drs. Caffrey, Fino, Kleinerman and Tomashefski based on the physicians' credentials and the administrative law judge's finding that the opinions were well reasoned and documented. *See Clark, supra; Dillon, supra; Lucostic, supra.* Moreover, claimant's contention that remand is required based upon the administrative law judge application of a modified version of the *Shuff* standard, under which he required claimant to do more than prove that pneumoconiosis hastened the miner's death in any way, is without merit in that none of credited opinions state that pneumoconiosis played any role in the miner's death. Thus, we affirm the administrative law judge's finding that the evidence failed to establish that pneumoconiosis hastened the miner's death pursuant to Section 718.205(c)(2) as this finding is rational and supported by substantial evidence. *See Shuff, supra.*

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting

Administrative Appeals Judge