

BRB No. 98-1443 BLA

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

Appeal of the Decision and Order - Denying Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

C. Patrick Carrick, Morgantown, West Virginia, for claimant.

Cathryn Celeste Helm (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, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (97-BLA-1348) of Administrative Law Judge Daniel L. Leland 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). The administrative law judge found, and the Director stipulated to, sixteen years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.¹ Decision and Order at 2. The administrative law judge

¹ The miner filed his claim for benefits on October 24, 1984, which was denied by Administrative Law Judge Bonfanti September 16, 1988. Director's Exhibit 16. Benefits were awarded on modification on January 29, 1993. Director's Exhibit 16. The miner died

concluded that the evidence of record was insufficient to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant contends that she should have automatically received benefits as her husband was receiving benefits at time of his death and the evidence is sufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c). The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

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 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).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 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 the miner's death was due to, or substantially contributed to, pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205, 718.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1993); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

Initially, contrary to claimant's argument, eligible surviving spouses are entitled to derivative benefits only if the deceased miner was receiving benefits at time of death and the claim was filed prior to January 1, 1982. *See* 20 C.F.R. §725.212(a)(3)(i). Thus, contrary to claimant's contention, she is not entitled to derivative benefits as the miner's claim was filed October 24, 1984. *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

on December 12, 1995. Director's Exhibit 3. Claimant filed her survivor's claim for benefits on May 10, 1996. Director's Exhibit 1.

After consideration of the administrative law judge's Decision and Order, 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 that there is no reversible error contained therein. The administrative law judge, in the instant case, rationally determined that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). See *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge noted that the death certificate, completed by Dr. Peter Ang, listed the immediate cause of death as metastatic prostate cancer, with chronic obstructive pulmonary disease, blindness, arthritis, stroke and chronic pain listed as other significant conditions. Director's Exhibit 3. Although the administrative law judge noted that Dr. Ang had stated in his deposition that chronic obstructive lung disease, which was due to black lung disease and smoking, was a cause of death, the administrative law judge went on to note that Dr. Ang opined that death was due to prostate cancer unrelated to chronic lung disease, and that the miner's death would have occurred whether the miner had black lung disease or not. Claimant's Exhibit 1. Further, while acknowledging that Dr. Ang had stated that the miner's chronic obstructive lung disease contributed significantly to his death by weakening his immune response and general medical condition, Claimant's Exhibit 1 at 13-14, the administrative law judge permissibly determined that this assessment was vague in light of Dr. Ang's other statements that chronic obstructive lung disease was not a cause of death. Decision and Order at 3. Thus, the administrative law judge permissibly found Dr Ang's opinion insufficient to establish death due to pneumoconiosis as it was inconsistent and vague. See *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). Further, contrary to claimant's contention, the administrative law judge is not required to accord greater weight to Dr. Ang, because he was claimant's treating physician. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Tedesco v. Director, OWCP*, 18 BLR 1-104 (1994); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Trumbo, supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).² Here, the administrative law judge accorded greater weight to the opinion of Dr. Spagnola, that pneumoconiosis did not contribute to the miner's death and that the principal cause of death was prostate cancer, because of his superior credentials. Director's Exhibit 18.³

² Dr. Ang testified that he was Board-certified in Internal Medicine and Geriatrics, but not pulmonary medicine. Claimant's Exhibit 1 at 4, 15.

³ Claimant contends that the administrative law judge erred in relying on Dr. Spagnola's status as a professor of pulmonary medicine because Dr. Spagnola's curriculum vitae was not part of the record and the administrative law judge relied solely on the letterhead on which Dr. Spagnola's opinion was written to determine his credentials. However, as the administrative law judge permissibly accorded less weight to Dr. Ang's opinion because he found it vague and, therefore, unpersuasive, error, if any, regarding Dr.

Consequently, we affirm the administrative law judge's denial in this survivor's claim as it is supported by substantial evidence and is in accordance with law. Inasmuch as claimant has failed to establish that the miner's death was due to pneumoconiosis, entitlement under Section 718.205(c) is precluded. *Shuff, supra; Neeley, supra.*

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

Spagnola's credentials would be harmless. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).