

BRB No. 01-0718 BLA

ZELDA MAE MECKLEY )  
(Widow of PAUL DEWAIN MECKLEY))

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 Richard A. Morgan,  
Administrative Law Judge, United States Department of Labor.

Raymond F. Keisling (Keisling, Schmitt & Coletta, P.C.), Carnegie, Pennsylvania,  
for claimant.

Dorothy L. Page (Eugene Scalia, 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: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner=s widow, appeals the Decision and Order (99-BLA-296) of  
Administrative Law Judge Richard A. Morgan 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).<sup>1</sup> The administrative law judge found

---

<sup>1</sup> The Department of Labor has amended the regulations implementing the Federal  
Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective  
on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at  
20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise  
noted, refer to the amended regulations.

that the parties stipulated to the existence of pneumoconiosis caused by the miner=s ten years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>2</sup> The administrative law judge concluded that the evidence of record was insufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner=s death. Accordingly, benefits were denied.

On appeal, claimant contends that the evidence is sufficient to establish that pneumoconiosis substantially contributed to the miner=s death. The Director, Office of Workers= Compensation Programs, responds, urging affirmance of the denial of benefits.

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=Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor=s benefits, 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 pneumoconiosis. 20 C.F.R. '718.3, 718.202, 718.203, 718.205(a); *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). For survivor=s claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner=s death, pneumoconiosis was a substantially contributing cause or factor leading to the miner=s death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. '718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of the miner=s death if it hastens the miner=s death. 20 C.F.R. '718.205(c)(5); *see Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

Claimant contends that the administrative law judge erred in according greater weight to the opinion of Dr. Salinas, the autopsy prosecutor, than to the opinion of Dr. Vogan, the miner=s treating physician.<sup>3</sup> We disagree. The administrative law judge accorded less

---

<sup>2</sup> The miner filed a claim for benefits on August 11, 1990, which was denied by the district director. Director=s Exhibit 29. The miner did not appeal that denial. The miner died on May 5, 1997. Director=s Exhibit 12. Claimant filed this survivor=s claim for benefits on August 7, 1991. Director=s Exhibit 1.

<sup>3</sup> In the autopsy report, Dr. Salinas found that the cause of death was significant, end

weight to the opinion of Dr. Vogan, the miner=s treating physician, because it provided no reasoning for its conclusions. This was proper. *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Moreover, contrary to claimant=s assertions, qualifying blood gas evidence and Dr. Vogan=s reference to chronic obstructive pulmonary disease in the miner=s lifetime claim are not sufficient to establish death due to pneumoconiosis. See 20 C.F.R. §§ 718.201, 718.205(c).

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, see *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See *Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Accordingly, since the administrative law judge rationally concluded that the evidence of record was insufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner=s death, we must affirm the administrative law judge=s denial of benefits in this survivor=s claim as it is supported by substantial evidence and is in accordance with law. *Lukosevicz, supra*; *Trumbo, supra*; see also *Director, OWCP v. Greenwich Collieries*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff=g sub nom. Greenwich Collieries v. Director, OWCP [Ondecko]*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

---

stage heart disease and that the coal dust particles in the lungs were suspicious for pneumoconiosis. Director=s Exhibit 13. In a subsequent letter, Dr. Salinas found that simple pneumoconiosis did not significantly contribute to the miner=s death. Director=s Exhibit 14.

In a brief letter, Dr. Vogan concluded that pneumoconiosis was a significant contributing factor in the miner=s death, Director=s Exhibit 21. The death certificate listed the cause of death as recent stroke and ischemic cardiomyopathy. Director=s Exhibit 12. Other medical evidence of record documents the miner=s diabetes and heart disease. Director=s Exhibit 20.

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

SO ORDERED.

---

ROY P. SMITH  
Administrative Appeals Judge

---

REGINA C. McGRANERY  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge