

BRB No. 06-0600 BLA

YVONNE R. WRIGHT )  
(Widow of LEONARD C. WRIGHT) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 )  
TROJAN MINING & PROCESSING ) DATE ISSUED: 03/27/2007  
 )  
and )  
 )  
TRAVELERS INSURANCE COMPANY )  
 )  
Employer/Carrier-Respondents )  
 )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
Party-in-Interest ) DECISION and ORDER

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

Stephen A. Sanders (Appalachian Citizens Law Center, Inc.), Prestonsburg, Kentucky, for claimant.

J. Logan Griffith (Porter, Schmitt, Banks & Baldwin), Paintsville, Kentucky, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (04-BLA-5321) of Administrative Law Judge Rudolf L. Jansen rendered 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). Based on the date of filing, April 2, 2002, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718, noting the

parties' agreement that the miner established thirty years of coal mine employment. The administrative law judge found the evidence of record sufficient to establish the existence of coal workers' pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), based on x-ray evidence,<sup>1</sup> and found that the miner was entitled to the presumption that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge, however, found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the miner's death was not due to pneumoconiosis pursuant to Section 718.205(c). Claimant contends that the administrative law judge should have given dispositive weight to the opinion of Dr. Breeding, the miner's treating physician, who found that the miner's death was hastened by pneumoconiosis. Employer responds, urging affirmance of the administrative law judge's decision, as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), 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 applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grills Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a survivor's claim filed on or after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment, that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or that the miner was entitled to the irrebuttable presumption at 20 C.F.R. §718.304, relating to the existence of complicated pneumoconiosis. See 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *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). Pneumoconiosis is a "substantially contributing cause of a miner's death if it hastens the miner's death". 20 C.F.R. §718.205(c)(2); see *Griffith v. Director*,

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<sup>1</sup> The administrative law judge found that the evidence relevant at 20 C.F.R. §718.202(a)(2)-(a)(4) did not establish the existence of pneumoconiosis. Decision and Order at 12-15.

*OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).<sup>2</sup>

After consideration of the administrative law judge's Decision and Order - Denying Benefits, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order - Denying Benefits is supported by substantial evidence and contains no reversible error. Contrary to claimant's argument, the administrative law judge properly accorded less probative weight to the opinion of Dr. Breeding, Claimant's Exhibits 3, 4. Even though the administrative law judge noted that Dr. Breeding had been the miner's treating physician, the administrative law judge found Dr. Breeding's opinion to be unreasoned because the doctor did not explain how he arrived at his conclusion that the miner's death was hastened by pneumoconiosis.<sup>3</sup> Decision and Order Denying Benefits at 17-18; see *Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-647 (6th Cir. 2003) ("[T]he opinions of treating physicians get the deference they deserve based on their power to persuade."); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994). Moreover, as it is within the discretion of the administrative law judge to determine whether a medical report is adequately reasoned and persuasive and the administrative law judge, herein, has permissibly exercised this discretion. There is no error in the administrative law judge's consideration of the opinion of Dr. Breeding. See *Trumbo*, 17 BLR 1-85; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986); *Fuller v. Gibraltar Corp.*, 6 BLR 1-1292 (1984).

Instead, contrary to claimant's argument, the administrative law judge properly gave full probative weight to Dr. Castle's opinion regarding the issue of death due to pneumoconiosis. The administrative law judge found it to be well reasoned and documented on that issue, as the administrative law judge found that Dr. Castle conducted an extensive review of the miner's medical records and concluded that the miner would have died when he did, regardless of his occupational history. Director's Exhibit 11; *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Clark*, 12 BLR 1-

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<sup>2</sup> Because the miner last worked in Kentucky, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 4.

<sup>3</sup> In particular, the administrative law judge noted that while Dr. Breeding considered the miner's thirty-three year history of coal mine employment, it was unclear that the doctor considered the miner's significant smoking history. Decision and Order at 13-14.

149; *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986).<sup>4</sup> The administrative law judge also found that the death certificate did not tend to establish that pneumoconiosis hastened the miner's death, as it listed congestive heart failure and lung cancer as the primary causes of death and did not list any other cause of death. Decision and Order at 17; Director's Exhibit 9. Additionally, the administrative law judge noted that while the miner's hospital and treatment records contained diagnoses of chronic obstructive pulmonary disease and emphysema on multiple occasions, no physician ever indicated that the miner's lung diseases were related to coal mine employment. The administrative law judge's finding that claimant failed to establish that pneumoconiosis hastened the miner's death at Section 718.205(c), and the administrative law judge's denial of survivor's benefits, are, therefore, affirmed. *See Mills v. Director, OWCP*, 348 F.3d 133, 23 BLR 2-12 (6th Cir. 2003).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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<sup>4</sup> Dr. Castle opined that the miner died due to bronchogenic carcinoma unrelated to coal mine employment. Director's Exhibit 11. Dr. Castle based his opinion, in part, on the results of an upper lung biopsy that showed extensive lung and pleural involvement of carcinoma.