

BRB No. 97-1155 BLA

MARY A. VIARS )  
(Widow of CARL VIARS) )  
 )  
 Claimant-Respondent )  
 )  
 v. )  
 )  
 SLAB FORK COAL COMPANY )  
 )  
 and ) DATE ISSUED:  
 )  
 WEST VIRGINIA COAL WORKERS' )  
 PNEUMOCONIOSIS FUND )  
 )  
 Employer/Carrier-Petitioners )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order of Edith Barnett, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle), Pineville, West Virginia, for claimant.

K. Keian Weld (West Virginia Coal Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (95-BLA-1346) of Administrative Law Judge Edith Barnett awarding 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). The administrative law judge found that employer stipulated that the miner had pneumoconiosis, that it was previously determined, and is undisputed, that the

miner's pneumoconiosis arose from his coal mine employment, and that claimant<sup>1</sup> established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were awarded. On appeal, employer contends that the administrative law judge erred in crediting Dr. Fox's opinion and in weighing the medical opinion evidence pursuant to Section 718.205(c). Claimant responds urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate in this appeal.<sup>2</sup>

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).

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; *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir., 1992); *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).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence or record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is

---

<sup>1</sup>Claimant is Mary A. Viars, the miner's widow, who filed a survivor's claim for benefits on July 20, 1994. Director's Exhibit 1. The miner, Carl Viars, filed a claim for benefits on January 27, 1984 and was awarded benefits by Decision and Order of Administrative Law Judge Frank J. Marcellino on September 14, 1988. Director's Exhibit 19. The miner died on June 11, 1994. Director's Exhibit 6.

<sup>2</sup>We affirm the administrative law judge's findings regarding the existence of pneumoconiosis arising out of coal mine employment as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

no reversible error contained therein. Employer initially contends that the administrative law judge erred in relying upon Dr. Fox's report because his opinion is based on evidence which is not a part of the record. Employer's Brief at 2. Dr. Fox, in a report dated September 16, 1994, opined that the miner's pneumoconiosis was one of the causes of the miner's death. Director's Exhibit 11. Prior to stating his opinion, Dr. Fox stated that he had treated the miner since 1958 and that it would be difficult to send thirty-six years of medical records. Instead, he indicated that he copied what he felt was "the more important records to give you an idea of the patient's medical and specifically his pulmonary problems." Director's Exhibit 11. He then discussed the findings contained in several of the records. Director's Exhibit 11. Contrary to employer's contentions, the records discussed by Dr. Fox are contained in the record at Director's Exhibit 10. These records are referred to in Dr. Fox's report and support the statement's made by Dr. Fox therein. Director's Exhibits 10, 11. Thus, we reject employer's argument that the administrative law judge erred in relying on Dr. Fox's opinion because it was based on evidence that is not in the record.

Employer next contends that the administrative law judge erred in weighing the opinions of Drs. Fox, DiStefano, Green, Hansbarger, Naeye, Fino, and Castle pursuant to Section 718.205(c). Employer's Brief at 2-7. Drs. Fox, DiStefano and Green opined that the miner's pneumoconiosis contributed to the miner's death, while Drs. Hansbarger, Naeye, Fino, and Castle opined that the miner's death was not related to pneumoconiosis. Director's Exhibits 8, 10, 11; Claimant's Exhibit 1; Employer's Exhibits 1, 2. The administrative law judge acted within her discretion in assigning limited weight to the opinions of Drs. Naeye, Castle, Fino, and Hansbarger because they relied on the miner's mild pneumoconiosis to conclude that pneumoconiosis could not have disabled him during his lifetime or contributed to his death while ignoring the autopsy findings of simple pneumoconiosis with moderate to focally marked emphysema and anthracosis. Decision and Order at 8; Director's Exhibits 7, 8; Employer's Exhibit 1, 2; *Lafferty v. Cannerton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985).

Further, the administrative law judge acted within her discretion in assigning greater weight to the opinions of Drs. Fox and DiStefano, on the basis of their status as the miner's treating physicians, and that of Dr. Green, because his opinion was well reasoned and documented the process by which pneumoconiosis contributed to the miner's death. Decision and Order at 9; Director's Exhibits 6, 9, 10; Claimant's Exhibit 1; *Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Lafferty, supra*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The administrative law judge is empowered to weigh the 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). Consequently, we affirm the administrative law judge's finding that claimant established that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) and the award of benefits as they are supported by substantial evidence.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

---

ROY P. SMITH  
Administrative Appeals Judge

---

JAMES F. BROWN  
Administrative Appeals Judge

---

NANCY S. DOLDER  
Administrative Appeals Judge