BRB No. 99-0736 BLA

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| GLENNA CARTWRIGHT (o.b.o. and Widow of JOHN C. CARTWRIGHT) | ) | |
| Claimant-Petitioner | ) | |
| v. | ) | DATE ISSUED: _____ |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| Respondent | ) | DECISION and ORDER |

Appeal of the Decision and Order of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Brian Allen Prim (Goldberg, Persky, Jennings, White & Hostler), Huntington, West Virginia, for claimant.

Dorothy L. Page (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: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Decision and Order (97-BLA-1706) of Administrative Law Judge Gerald M. Tierney (the administrative law judge) denying benefits in both a miner's claim and a survivor's claim filed pursuant to the provisions of Title IV of

[1]Claimant, who is the widow of the miner, John C. Cartwright, filed an appeal on behalf of her husband and for herself.

the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act). The miner's claim is before the Board for the second time. In the original Decision and Order, Administrative Law Judge Jeffrey Tureck credited the miner with five years and nine months of coal mine employment and adjudicated the miner's claim pursuant to the regulations contained in 20 C.F.R. Part 718. The Director, Office of Workers' Compensation Programs (the Director), conceded the existence of pneumoconiosis and total disability. Judge Tureck found the evidence sufficient to establish that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. However, Judge Tureck found the evidence insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, Judge Tureck denied benefits in the miner's claim.

In response to claimant's appeal, the Board affirmed Judge Tureck's length of coal mine employment finding and his finding at 20 C.F.R. §718.203. However, the Board vacated Judge Tureck's denial of benefits and remand the case to the district director for the development of a complete pulmonary examination. *Cartwright v. Director, OWCP*, BRB No. 96-0298 BLA (Aug. 28. 1996)(unpub.). While the miner's claim was pending before the district director, the miner died on April 10, 1996. Director's Exhibits 57, 59. Claimant filed her survivor's claim on November 27, 1996. Director's Exhibit 57. Further, on December 30, 1996, claimant filed a letter which indicated that she wanted to continue to pursue the miner's claim. Director's Exhibit 56. On April 30, 1997, the district director denied benefits in the miner's claim. Director's Exhibit 65. Although claimant initially requested a hearing before the Office of Administrative Law Judges (OALJ), Director's Exhibit 66, claimant subsequently requested a decision on the record by the OALJ, Director's Exhibit 69. Hence, on October 22, 1998, the administrative law judge issued an Order granting claimant's request for a decision on the record. *Id*.

In a decision dated March 5, 1999, the administrative law judge found the evidence insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits in the miner's claim. With regard to the survivor's claim, the administrative law judge found the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits in the survivor's claim. On appeal, claimant challenges both decisions.

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).

Initially, we will address claimant's contention, with respect to the miner's claim, that the administrative law judge erred in finding the evidence insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis must be at least a contributing cause of a miner's totally disabling respiratory impairment in order to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). *See Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). The administrative law judge considered the hospital records, treatment records, and the medical opinions of Drs. Gibbs and Ranavaya. The administrative law judge correctly stated that the hospital records, the treatment records, and Dr. Gibbs' report had not "specifically addressed the issue of whether the miner's total respiratory disability was caused, in part, by his coal workers' pneumoconiosis." Decision and Order at 3. Although Dr. Ranavaya had opined that the miner suffered from a totally disabling respiratory impairment due to pneumoconiosis,[2] Director's Exhibit 69, the administrative law judge properly discredited the opinion because it was not well reasoned.[3] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Thus, inasmuch as neither claimant nor the Director raises any other issues at 20 C.F.R. §718.204(b), we affirm the administrative law judge's finding that the medical

[2]The administrative law judge correctly stated that "Dr. Ranavaya responded that 'yes' the miner's abnormal lung condition, already found to be totally disabling, was related to the inhalation of coal dust." Decision and Order at 3.

[3]The administrative law judge stated that "Dr. Ranavaya's simple 'yes' answer [in response to the question, 'Was it related to the inhalation of coal dust?'], with no accompanying rationale and documentation, is not sufficient to establish the requisite causal nexus between the miner's total disability and his coal workers' pneumoconiosis." Decision and Order at 3. While an administrative law judge may find that a medical opinion on etiology, which consists of a physician responding "yes" or "no" to questions set forth on a standardized medical report form, is reasoned, *see Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*); *Visich v. McCulloch Oil Corp.*, 4 BLR 1-705 (1982), he may also find that this type of opinion is not reasoned if the physician does not provide a discussion of the rationale and clinical basis for the conclusions reached, *see Crosson v. Director, OWCP*, 6 BLR 1-809 (1984).

evidence is insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b), as supported by substantial evidence. *See Robinson, supra*. Since claimant failed to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b), an essential element of entitlement, we hold that the administrative law judge properly denied benefits in the miner's claim under 20 C.F.R. Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Next, we address claimant's contention, with respect to the survivor's claim, that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Benefits are payable on survivor's claims filed on or after January 1, 1982 only when the miner's death was due to pneumoconiosis.[4] *See* 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). However, before any finding of entitlement can be made in a survivor's claim, a claimant must establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A claimant must also establish that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. *See Boyd*, *supra*. The Fourth Circuit has adopted the standard whereby pneumoconiosis will be considered a substantially contributing cause of the miner's death if it actually hastened the miner's death. *See Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993). The administrative law judge considered the death certificate signed by Dr. Gibbs and the medical reports of Drs. Gibbs and Ranavaya. In a report dated October 19, 1998, Dr. Gibbs opined that the cause of the miner's death was multifactorial. Director's Exhibit 69. Further, Dr. Gibbs stated that "the fact that [the miner] had occupational exposure from his coal mining employment may have well contributed to his

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[4]Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

> (1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or
> (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
> (3) Where the presumption set forth at §718.304 is applicable.

20 C.F.R. §718.205(c).

occupational pneumoconiosis." *Id*. In the death certificate, Dr. Gibbs indicated that the miner's death was caused by intrathoracic neoplasm. Director's Exhibit 59. As discussed *supra*, Dr. Ranavaya had opined without explanation that pneumoconiosis was a substantially contributing cause of the miner's death. Director's Exhibit 69.

The administrative law judge permissibly discredited Dr. Gibbs' opinion because he found it to be equivocal.[5] *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). In addition, the administrative law judge permissibly discredited the opinions of Drs. Gibbs and Ranavaya because he found them not to be well reasoned.[6] *See Clark, supra*; *Fields, supra*; *Fuller, supra*. Therefore, since the administrative law judge properly discredited the only medical opinions of record which could support a finding that pneumoconiosis hastened the miner's death, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). *See Shuff, supra*.

In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), an essential element of entitlement under 20 C.F.R. Part 718 in a survivor's claim, *see Trumbo, supra*; *Trent, supra*; *Perry, supra*, we affirm the administrative law judge's denial of benefits in the survivor's claim.

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[5]The administrative law judge observed that "Dr. Gibbs' word choice, 'may have well contributed' was equivocal." Decision and Order at 5.

[6]The administrative law judge stated that "Dr. Gibbs' response is confusing." Decision and Order at 4. The administrative law judge observed that although Dr. Gibbs "began by stating that he was addressing the causality of the miner's lung cancer and mentioned the miner's occupational exposure from his coal mining employment, Dr. Gibbs ended by stating that the miner's occupational exposure from his coal mining employment may have well contributed to his occupational pneumoconiosis." *Id*. at 4-5. The administrative law judge also observed that Dr. Gibbs "did not state that the miner's occupational exposure from his coal mining employment contributed to his lung cancer." *Id*. at 5. Further, the administrative law judge stated that "Dr. Ranavaya's simple 'yes' answer, with no accompanying rationale and documentation, is not sufficient to establish the requisite causal nexus between the miner's death and his pneumoconiosis." *Id*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge