

BRB No. 99-0820 BLA

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_____)	
LUCY C. JARRELL)	
(Widow of WILLIE B. JARRELL))	
)	
Claimant-Petitioner)	DATE ISSUED:
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	
CORPORATION)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	DECISION and ORDER

Party-in-Interest

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

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

Paul E. Frampton (Bowles, Rice, McDavid, Graff & Love), Fairmont, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-1036) of Administrative Law Judge Daniel L. Leland 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). The administrative law judge accepted the parties' stipulation to thirty-eight years of coal mine employment and found that the medical evidence of record established the existence of

pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(2), (4), 718.203(b). The administrative law judge found, however, that claimant did not prove that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, he denied benefits.

On appeal, claimant contends that the administrative law judge erred in his weighing of the medical evidence pursuant to Section 718.205(c)(2). Employer responds, urging affirmance, and the Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.

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 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 pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2), (4). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it hastens the miner's death in any way. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 979-80, 16 BLR 2-90, 2-92-93 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

Pursuant to Section 718.205(c)(2), claimant challenges the administrative law judge's finding that she did not establish that the miner's death was hastened by pneumoconiosis.

Review of the record indicates that the miner was admitted to the Charleston Area Medical Center (CAMC) on July 26, 1997 complaining of dyspnea. Employer's Exhibit 4. The miner went into cardiopulmonary arrest in the emergency room and was resuscitated. The next morning, he went into arrest once again and was again resuscitated. He was found pulseless later that day. The final diagnoses listed in the hospital discharge summary were subendocardial infarction, end stage renal disease due to hypertension and atherosclerosis, cardiac arrest, atrial fibrillation, COPD, coronary artery disease, and diabetes. *Id.*

¹ The record also contains hospital records from the final years of the miner's life. These records detail multiple hospitalizations for heart attacks, congestive heart failure, pulmonary edema, end stage renal disease, diabetes, and hypertension. Employer's Exhibits 4, 5.

The miner's death certificate, completed by the physician who treated the miner at CAMC, listed the cause of death as dysrhythmia secondary to congestive heart failure, due in turn to cardiomyopathy, malnutrition, and end stage renal failure due to hypertension, atherosclerosis, and diabetes. Director's Exhibit 10.

An autopsy was performed by Dr. Paul Mellen. Dr. Mellen confirmed the presence of advanced coronary artery disease with associated old myocardial infarctions, and advanced kidney disease. Director's Exhibit 11. He also diagnosed COPD, "anthracosis ('dust macules') with minimal fibrosis," pulmonary edema, and pneumonia. *Id.* He attributed the miner's death to advanced coronary artery disease with ischemic cardiomyopathy, and indicated that end stage renal disease and COPD were contributing causes.

Dr. Richard Naeye, who the record indicates is Board-certified in Anatomical and Clinical Pathology, reviewed the autopsy report and slides and the miner's hospital records. Employer's Exhibit 3. He stated that the slides revealed findings that just met the minimum requirements for a diagnosis of very mild, simple coal workers' pneumoconiosis. Dr. Naeye indicated that the miner's pneumoconiosis was "far too mild" to have hastened his death due to "chronic renal and cardiac failure and a terminal acute lobular pneumonia." *Id.* Dr. Naeye was later deposed, where he added that the miner had centrilobular emphysema due to smoking, and he explained that the miner's heart and kidney disease caused pulmonary edema which in turn led to pneumonia. Employer's Exhibit 6 at 6.

Drs. Gregory Fino and Dominic Gaziano, who are Board-certified in Internal Medicine and Pulmonary Disease, reviewed the medical evidence of record and concluded that although the autopsy revealed coal workers' pneumoconiosis, the miner's death was unrelated to pneumoconiosis. Director's Exhibit 13; Employer's Exhibit 12. Dr. Gaziano stated that the miner died of a heart attack or arrest from arteriosclerotic heart disease. Dr. Fino opined that the miner's death was due to a combination of non-pulmonary causes, including coronary artery disease, congestive heart failure, diabetes, hypertension, and chronic renal failure. He specified that the miner's death "was not caused, contributed to, or hastened by the inhalation of coal mine dust." Employer's Exhibit 12 at 15.

Claimant submitted a brief letter from Dr. Scott Miller, the miner's treating cardiologist. Claimant's Exhibit 1. Dr. Miller, whose qualifications are not in the record, stated that the miner had significant coal workers' pneumoconiosis. Dr. Miller indicated that the miner's "lungs did interfere

with treatment for his heart disease in that there were certain medications that we could not use effectively . . . , like betablockers, due to his pneumoconiosis.” *Id.* It was Dr. Miller’s opinion that the miner’s “bad lungs did contribute to his death.” *Id.*

The administrative law judge set forth each physician’s analysis and reasoning, Decision and Order at 5-8, and took into account each physician’s qualifications. *See 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). The administrative law judge noted initially that Dr. Mellen did not identify the etiology of the COPD that he stated contributed to the miner’s death. *See* 20 C.F.R. §718.201. The administrative law judge then accorded greatest weight to Dr. Naeye’s opinion in view of his Board-Certification in Pathology and because Dr. Naeye based his opinion on a review of the autopsy lung tissue slides. The administrative law judge gave additional weight to the opinions of Drs. Fino and Gaziano based on their high qualifications in Internal Medicine and Pulmonary Disease. The administrative law judge found, by contrast, that Dr. Miller’s opinion merited less weight because Dr. Miller lacked credentials in Pulmonary Medicine, and because the administrative law judge found Dr. Miller’s report to be “cursory and not well-reasoned.” Decision and Order at 11. Consequently, the administrative law judge found that, “[w]eighing all of the evidence, I conclude that claimant has not established that the miner’s death” was due to or hastened by pneumoconiosis. *Id.*

Claimant contends that the administrative law judge erred in crediting the opinions of Drs. Naeye, Fino, and Gaziano and in discounting the opinion of Dr. Miller. Claimant’s Brief at 5-6. However, contrary to claimant’s assertion that the opinions of Drs. Naeye, Fino, and Gaziano are all unreasoned, review of the record reveals that these physicians rendered reasoned medical opinions.

As highlighted by the administrative law judge, Dr. Naeye reviewed the autopsy report and slides and the miner’s medical records, wrote a report, and explained his opinion in detailed testimony. Employer’s Exhibits 3, 6. Dr. Fino reviewed the medical evidence of record and explained his opinion with specific references to supportive medical evidence. Employer’s Exhibit 2; *see Migliorini v. Director, OWCP*, 898 F.2d 1292, 1295, 13 BLR 2-418, 2-423 (7th Cir. 1990); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987). Although Dr. Gaziano provided a less detailed analysis, the administrative law judge noted that Dr. Gaziano based his opinion on a review

² The administrative law judge also considered a letter from Dr. Miller submitted in the miner’s 1995 claim for benefits, which was denied. Director’s Exhibit 22. In that letter, Dr. Miller stated that the miner had coal workers’ pneumoconiosis by x-ray, and severe coronary artery disease. Director’s Exhibits 12, 22.

of the medical evidence of record. Decision and Order at 7. In light of Dr. Gaziano's documented credentials and his opinion's consistency with the other opinions of record, the administrative law judge was not compelled to reject Dr. Gaziano's report as unreasoned. *See Underwood v. Elkay Mining Co.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997)(listing the detail of analysis of an opinion as one of several factors to be considered). Finally, the administrative law judge permissibly considered that Dr. Miller lacked comparable pulmonary qualifications and submitted a cursory opinion, in contrast to the more thorough reports of Drs. Naeye and Fino. *See Hicks, supra; Akers, supra; Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993); *Shuff, supra*. Therefore, we conclude that the administrative law judge did not err in his weighing of the medical evidence.

In sum, the administrative law judge considered all of the relevant evidence, and substantial evidence supports his finding. Therefore, we affirm the administrative law judge's finding pursuant to Section 718.205(c)(2). *See Shuff, supra*.

³ Moreover, the administrative law judge did not rely primarily on Dr. Gaziano's opinion, but rather, found it to be supportive of Dr. Naeye's opinion. Decision and Order at 11. Additionally, the administrative law judge considered that, in addition to reviewing the current record, Dr. Gaziano had examined the miner in 1995. Director's Exhibit 22; Decision and Order at 7.

⁴ Because we affirm the administrative law judge's finding pursuant to Section 718.205(c)(2), we need not address the administrative law judge's analysis of the medical evidence pursuant to Section 718.202(a). *See Island Creek Coal Co. v. Compton*, F.3d , 2000 WL 524798 (4th Cir., May 2, 2000).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge