

BRB No. 99-0866 BLA

EMILY B. MUSSOLINE,)
(Widow of JOSEPH A. MUSSOLINE))

Claimant-Petitioner)

v.)

JEDDO - HIGHLAND COAL CO.,)

and)

LACKAWANNA CASUALTY COMPANY)

Employer/Carrier-)
Respondents)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Lawrence P. Donnelly,
Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Frank L. Tamulonis, Jr., (Zimmerman, Lieberman & Derenzo), Pottsville,
Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order - Denying Benefits (98-BLA-0897) of Administrative Law Judge Lawrence P. Donnelly 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 administrative law judge found that the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), and 718.203(b), but found that it failed 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 the survivor's claim.

On appeal, claimant challenges the administrative law judge's consideration of the medical opinions of record pursuant to Section 718.205(c). Employer, in response, asserts that the Decision and Order of the administrative law judge is supported by substantial evidence, and accordingly, urges affirmance. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond to the instant appeal.²

¹Claimant is Emily B. Mussoline, surviving spouse of the miner, Joseph A. Mussoline. The miner died on July 3, 1995. Director's Exhibit 6. Claimant filed a survivor's claim with the Department of Labor on October 28, 1997. Director's Exhibit 1.

²We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant is the eligible surviving spouse of the miner, that the record establishes 37.3 years of coal mine employment, and his findings that the evidence establishes the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a)(4) and 718.203(b) *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Coal Co.*, 6 BLR 1-710 (1983).

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

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718 in a claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; *see Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); *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). The United States Court of Appeals for the Third Circuit, under whose jurisdiction this case arises, has held that evidence demonstrating that pneumoconiosis hastened the miner's death establishes that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to Section 718.205(c)(2). *See Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Lukosevicz, supra*.

Claimant challenges the administrative law judge's consideration of the medical opinion evidence pursuant to Section 718.205(c). Specifically, claimant contends that the administrative law judge erred in failing to find the opinions of Drs. Campbell and Weiss sufficient to establish that the miner's death was due to pneumoconiosis. We disagree. The administrative law judge acknowledged that Dr. Campbell and Dr. Weiss, were the miner's treating physicians, but rationally determined that their opinions that pneumoconiosis "impacted on [the miner's] death" were not documented or well-reasoned. *See McMath c. Director, OWCP*, 12 BLR 1-6 (1987); *Cooper v. Director, OWCP*, 11 BLR 1-95 (1986); *Fields v. Island Creek Coal Corp.*, 10 BLR 1-19 (1987). The administrative law judge reasonably found that Dr. Campbell's opinion was ambiguous since he used qualifying language indicating that the miner's advanced chronic obstructive pulmonary disease "*appeared*" to be clearly related to coal miner's pneumoconiosis and that this opinion was not supported by objective testing. (*emphasis added*). Director's Exhibits 17, 16. Decision and Order at 12. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1998). The administrative law judge also rationally found that Dr. Weiss provided no documentation for his opinion that pneumoconiosis caused a significant pulmonary impairment. Director's Exhibits 8, 15. The administrative law judge, however, permissibly credited Dr. Oesterling's opinion that the miner died due to extensive broncho alveolar carcinoma, and that his pneumoconiosis was too mild to affect his pulmonary function. Employer's Exhibits 1, 4 over the opinions of Drs. Campbell and

Weiss on the basis that Dr. Oesterling's opinion was both documented and reasoned. Decision and Order at 13; *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *McMath supra*; *Cooper, supra*; *Fields, supra*.

Additionally, we reject claimant's contentions that the administrative law judge erred when he contradicted himself by stating that there was no hard evidence regarding the existence of pneumoconiosis, improperly substituted his own opinion for that of the doctors of record, erred when he found that "[t]he symptoms which Mr. Mussoline suffered terminally were due to his lung cancer....," and erred when he stated that the physicians "who indicate that pneumoconiosis is a significant contributing cause of the patient's death make this determination after the patient's death,". Decision and Order at 11. Claimant's Brief at 3-4. The statements that claimant references and attributes to the administrative law judge were the exact text of Dr. Dittman's opinion. Employer's Exhibit 3; Decision and Order at 11-12. Claimant apparently did not realize page 11 of the administrative law judge's Decision and Order was the indented quote from Dr. Dittman's report and this language was followed on page 12 of the Decision and Order with the appropriate exhibit number.

Inasmuch as the administrative law judge's finding, that claimant has failed to meet her burden establishing that the miner's pneumoconiosis was a substantially contributing cause of his death, is supported by substantial evidence, we affirm, the administrative law judge's finding that the medical evidence fails to establish death due to pneumoconiosis at Section 718.205(c). *See Lango, supra*; *Lukosevicz, supra*; *see also Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley, supra*.

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