

BRB No. 99-0876 BLA

EILEEN PURCELL)	
(Widow of RICHARD PURCELL))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

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

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Richard A. Seid (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 and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order - Denying Benefits (98-BLA-0937) 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 Act). The administrative law judge credited the miner with 10.5 years of qualifying coal mine employment pursuant to the stipulation of the parties, and adjudicated this claim, filed on January 20, 1998, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge determined that the issue of the existence of pneumoconiosis arising out of coal mine employment was not contested, but found that the evidence was insufficient to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's findings pursuant to

Section 718.205(c). The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance.

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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on a survivor's claim filed on or after January 1, 1982, only where the miner's death was due to pneumoconiosis, where pneumoconiosis was a substantially contributing cause of death, where death was caused by complications of pneumoconiosis, or where complicated pneumoconiosis is established, and the evidence establishes the existence of pneumoconiosis arising out of coal mine employment. *See* 20 C.F.R. §§718.1, 718.205(c)(1)-(3); *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, within whose jurisdiction this case arises, has held that, for purposes of Section 718.205(c)(2), pneumoconiosis is considered a substantially contributing cause of the miner's death "where pneumoconiosis actually hastens death." *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989); *see Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997).

Claimant challenges the administrative law judge's finding that the weight of the evidence was insufficient to establish that pneumoconiosis hastened the miner's death pursuant to Section 718.205(c)(2). Specifically, claimant contends that the administrative law judge erred in evaluating and weighing the conflicting evidence and that he provided inadequate or invalid reasons for his credibility determinations. We disagree. The administrative law judge accurately reviewed the relevant evidence of record and the qualifications of the physicians, and determined that the records from the miner's last hospitalization at Reading Hospital showed that following coronary artery bypass surgery, pulmonary medicine and infectious disease specialists were consulted for treatment of pneumonia with staphylococcus and enterobacter, but the miner developed a systemic inflammatory response to sepsis, which led to acute respiratory distress syndrome and death. Decision and Order at 3-8; Director's Exhibit 18; Claimant's Exhibit 1. The administrative law judge determined that the miner's death certificate, signed by Dr. Lough, attributed the immediate cause of death to cardiac arrest due to or as a consequence of atherosclerotic cardiovascular disease due to or as a consequence of status post coronary artery bypass grafting due to or as a consequence of black lung disease, but no autopsy was performed, and although Dr. Kraynak testified that Dr. Lough was affiliated with Reading Hospital and treated the miner prior to his death, Dr. Lough's name did not appear on any of the hospital records. Decision and Order at 2, 7-8; Director's Exhibits 6, 18; Claimant's Exhibit 7 at 11; *see Addison v. Director, OWCP*, 11 BLR 1-68 (1988). The administrative law judge further

determined that Drs. Kraynak, Fall and Simelaro concluded that pneumoconiosis contributed to or hastened the miner's death, while Drs. Ranavaya and Michos opined that it did not. Decision and Order at 8.

The administrative law judge acted within his discretion in according no weight to the opinion of Dr. Kraynak, that claimant would have been in a better position to fight his respiratory distress syndrome if he did not have pneumoconiosis, because the administrative law judge found that Dr. Kraynak was under the erroneous assumption, unsupported by the record, that pneumoconiosis had significantly impaired the miner's lung function.¹ Decision and Order at 9; *see generally Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Rickey v. Director, OWCP*, 7 BLR 1-106 (1984). Further, while Dr. Kraynak referred to marked hypoxemia throughout the miner's last hospitalization, the administrative law judge found that the physician did not quantify the hypoxemia or show, by reference to specific tests or evidence in the hospital records, that it was related to pneumoconiosis. Decision and Order at 7, 9; Claimant's Exhibit 5. Contrary to claimant's arguments, the administrative law judge reasonably discounted Dr. Kraynak's later deposition testimony, that pneumoconiosis weakened the miner's immune system, because the administrative law judge found that Dr. Kraynak did not develop that opinion independently but rather adopted it from Dr. Simelaro's report.² Decision and Order at 9; Claimant's Exhibit 7.

¹The administrative law judge determined that Dr. Kraynak's diagnosis of a severe, totally disabling respiratory impairment due to pneumoconiosis was based primarily on the results of the pulmonary function studies he conducted, which the administrative law judge found were unreliable because they were invalidated by Drs. Sahillioglu and Simelaro, who possessed superior qualifications. Decision and Order at 9; Director's Exhibits 9-11; Claimant's Exhibits 3, 4, 6, 13, 15; *see generally Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Street v. Consolidation Coal Co.*, 7 BLR 1-65 (1984). The administrative law judge further noted that Dr. Kraynak defended the validity of his tests and testified that the normal pulmonary function study results obtained by Dr. Rashid on February 20, 1997 were invalid, Claimant's Exhibit 15 at 7-8, 10, whereas the administrative law judge determined that Dr. Rashid performed the only valid pulmonary function study of record. Decision and Order at 9; Director's Exhibit 8; Claimant's Exhibits 3, 4. While claimant argues that pulmonary function study results are not relevant to the cause of the miner's death, and asserts that there is no support in the record for the administrative law judge's conclusion that this unreliable basis for Dr. Kraynak's finding of total disability carried over into his findings regarding the cause of the miner's death, the administrative law judge reasonably considered this evidence in assessing the probative value of Dr. Kraynak's opinion.

²We reject claimant's assertion that Dr. Kraynak did not adopt Dr. Simelaro's opinion, and that the administrative law judge's inference is not supported by the record. A review of

The administrative law judge also acted within his discretion in discounting the opinion of Dr. Fall on the ground that it was inadequately reasoned. While Dr. Fall opined that the miner's respiratory failure was indicative of severe underlying lung disease, specifically anthracosis, the administrative law judge determined that the only severe lung condition apparent in the hospital records following surgery was pneumonia. Inasmuch as the administrative law judge found that the hospital records did not support a finding of extensive anthracosilicosis, and that the physician brushed over the miner's sepsis and did not consider the miner's smoking history, the administrative law judge permissibly accorded Dr. Fall's opinion no weight. Decision and Order at 9; Claimant's Exhibit 1; *see generally Risher v. Director, OWCP*, 940 F.2d 327, 15 BLR 2-186 (8th Cir. 1991); *Gouge v. Director, OWCP*, 8 BLR 1-307 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

the record reveals that Dr. Kraynak issued two reports and testified at a prior deposition without mentioning any effect pneumoconiosis might have on the miner's immune system, and it was not until after he reviewed Dr. Similaro's report, which indicated that the miner's anthracosilicosis lowered his immunity to infection, Claimant's Exhibit 3, that Dr. Kraynak opined that the miner's pneumoconiosis "weakened his immune system and made him much more susceptible to develop adult respiratory distress syndrome which led to his death." Claimant's Exhibit 7 at 14.

Of the remaining opinions, the administrative law judge determined that the conflicting opinions of Drs. Similaro and Michos were equally probative because both physicians were highly qualified pulmonologists who performed comprehensive reviews of the relevant evidence and rendered well-reasoned opinions which were supported by the objective studies and the miner's hospital course.³ Decision and Order at 9; Director's Exhibits 28, 19; Claimant's Exhibits 3, 4, 8; *see generally* *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Since neither physician buttressed his opinion with medical literature in support of his conclusions,⁴ the administrative law judge reasonably found that claimant failed to meet her burden of proving that pneumoconiosis hastened the miner's death by a preponderance of the evidence. Decision and Order at 9; *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); *Lango, supra*; *Lukosevicz, supra*. The administrative law judge's findings and inferences pursuant to Section 718.205(c) are supported by substantial evidence and thus are affirmed. Consequently, we affirm the administrative law judge's denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

³The administrative law judge acknowledged Dr. Kraynak's opinion that Drs. Ranavaya and Michos performed a limited review of the medical evidence, but noted that the record did not contain a substantial number of medical exhibits, and concluded "[t]hat these physicians did not review Dr. Kraynak's reports is insignificant as Dr. Kraynak rendered an unreliable opinion based on invalid pulmonary function studies." Decision and Order at 10. The administrative law judge, however, did not credit the opinion of Dr. Ranavaya, that pneumoconiosis did not contribute to the miner's death, which claimant correctly asserts is conclusory. Director's Exhibit 26.

⁴Dr. Similaro opined that pneumoconiosis hastened the miner's death because it lowered the miner's immunity to infection, from which his respiratory distress syndrome followed. Decision and Order at 10; Claimant's Exhibit 3. Dr. Michos opined that the miner's death was not hastened or aggravated by pneumoconiosis, and that the cause of death, acute respiratory distress syndrome secondary to sepsis with multiorgan failure, was in no way associated with the miner's coal mine employment. Decision and Order at 7, 10; Director's Exhibit 28.

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge