

BRB No. 04-0717 BLA

LOIS B. HRUTKAY)	
(Widow of EDWARD J. HRUTKAY))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BETHENERGY MINES, INCORPORATED)	DATE ISSUED: 05/12/2005
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

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

Elizabeth M. Tarasi (Tarasi, Tarasi & Fishman, P.C.), Pittsburgh, Pennsylvania, for claimant.

Carl J. Smith, Jr. (Richman & Smith, Attorneys at Law LLP), Washington, Pennsylvania, for employer.

Before: McGRANERY, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (2003-BLA-6352) of Administrative Law Judge Daniel L. Leland rendered 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). Based on the date of filing, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718.¹ The administrative law

¹ The record indicates that the miner filed an application for benefits on February 23, 1998, which was denied by Administrative Law Judge Michael P. Lesniak on October 18, 1999, due to the miner’s failure to establish the existence of coal workers’ pneumoconiosis.

judge found that the parties agreed, at the hearing, that the only issue before the administrative law judge was the cause of the miner's death, Hearing Transcript at 5-6, and the administrative law judge found that the evidence of record failed to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred by: failing to find that the medical opinion of Dr. Wecht, the doctor who performed the miner's autopsy, established that the miner's death was due to pneumoconiosis at Section 718.205(c); exhibiting bias against Dr. Wecht's opinion; and erroneously crediting the contrary opinions of Dr. Naeye and Dr. Altmeyer as well-reasoned. Claimant also contends that the administrative law judge erred in finding that Dr. Naeye was better qualified than Dr. Wecht to render an opinion as to the cause of the miner's death. Employer responds, urging affirmance of the decision of the administrative law judge denying benefits as it is supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

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 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 in a survivor's claim filed on or after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. Death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption at Section 718.304, relating to complicated pneumoconiosis, is applicable. 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *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). Pneumoconiosis is a "substantially contributing cause of a miner's death" if it hastens the

Director's Exhibit 1. On appeal, the Board affirmed the denial of benefits. *Hrutkay v. BethEnergy Mines, Inc.*, BRB No. 00-0260 BLA (Oct. 31, 2000) (unpub.). The miner died on April 10, 2002, Director's Exhibit 12, and claimant filed for survivor's benefits on August 28, 2002. Director's Exhibit 3. The sole issue before the administrative law judge with respect to the survivor's claim was whether the miner's death was due to pneumoconiosis. See Hearing Transcript at 5-6.

miner's death. 20 C.F.R. §718.205(c)(2); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989).²

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence and contains no reversible error. Pursuant to Section 718.205(c), claimant contends that the administrative law judge erred by failing to accord determinative weight to the opinion of Dr. Wecht, the physician who performed the miner's autopsy. The administrative law judge accorded little weight to Dr. Wecht's opinion, that the primary cause of the miner's death was heart disease, but that coal workers' pneumoconiosis contributed to his death by compromising the miner's lungs. Employer's Exhibit 1; Director's Exhibit 12; Decision and Order at 4. The administrative law judge acknowledged Dr. Wecht's diagnosis of chronic obstructive pulmonary disease, but found that his determination that it was due to coal dust exposure, rather than the miner's lengthy smoking history, was unpersuasive. Employer's Exhibit 1; Director's Exhibit 12; Decision and Order at 4. The administrative law judge also determined that Dr. Wecht's opinion was not well-reasoned because Dr. Wecht failed to provide an adequate rationale for his conclusion that the miner's minimal pneumoconiosis contributed to the miner's death. The administrative law judge further found that Dr. Wecht had less expertise in evaluating occupational lung diseases than Dr. Naeye. Decision and Order at 4.

It is within the administrative law judge's discretion to determine whether a medical report is adequately reasoned and persuasive. In this case, the administrative law judge reviewed the relative qualifications of the aforementioned physicians, and permissibly determined that Dr. Naeye's expertise was greater than Dr. Wecht's. Employer's Exhibits 1, 6; Director's Exhibit 12; Decision and Order at 4; *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Worhach v. Director, OWCP*, 17 BLR 1-105; *Trumbo*, 17 BLR 1-85; *Urgolites v. Bethenergy Mines, Inc.*, 17 BLR 1-20 (1992); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Additionally, there is no merit in claimant's argument that the administrative law judge exhibited bias against Dr. Wecht, as claimant has not specified a basis in the record which supports this allegation. See *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991). Accordingly, we find no error in the administrative law judge's consideration of Dr. Wecht's opinion. See *Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2003).

² Since the miner's last coal mine employment took place in the Commonwealth of Pennsylvania, the Board will apply the law of the United States Court of Appeals for the Third Circuit. Director's Exhibit 1; see *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

We further find no merit in claimant's contentions that the administrative law judge erred by independently interpreting the medical evidence of record, failing to examine the findings contained in the relevant medical reports, or mechanically crediting the opinions of employer's physicians, Drs. Naeye and Altmeyer, that the miner's death was not due to, or hastened by the miner's minimal pneumoconiosis. Employer's Exhibits 1, 3, 6, 7; Decision and Order at 4; *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 9 BLR 2-1 (3d Cir. 1986); *Trumbo*, 17 BLR 1-85; *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); *Fields*, 10 BLR 1-19. Moreover, the administrative law judge is not required to credit the opinion of the physician who performed the miner's autopsy, but may credit the opinion of a doctor who reviewed the relevant medical evidence. *Evosevich v. Consolidation Coal Co.*, 789 F.2d 1021, 9 BLR 2-10 (3d Cir. 1986); *Cadwallader v. Director, OWCP*, 7 BLR 1-879 (1985); *Dipyatic v. BethEnergy Mines Corp.*, 7 BLR 1-758 (1985). The administrative law judge, therefore, permissibly credited the opinions of Dr. Naeye and Dr. Altmeyer as the administrative law judge found these opinions better reasoned and more persuasive than Dr. Wecht's opinion, as they "thoroughly discussed all the evidence and provided sound conclusions." Decision and Order at 4; Employer's Exhibits 1, 3, 6, 7; Director's Exhibit 12; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Because it is within the discretion of the administrative law judge, as the trier of fact, to determine whether a medical report is adequately documented and reasoned and the administrative law judge has properly exercised his discretion in this case, we affirm the administrative law judge's finding that the medical reports of record do not support a finding of death due to pneumoconiosis under Section 718.205(c), and, thereby, entitlement to benefits. *Lukosevicz*, 888 F.2d 1001, 13 BLR 2-101.

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

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge