

BRB No. 04-0738 BLA

JULIA ANN BUSH )  
(Widow of RONALD LAMAR BUSH) )  
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Claimant-Petitioner ) DATE ISSUED: 05/16/2005  
 )  
v. )  
 )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
Respondent ) DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Janice K. Bullard,  
Administrative Law Judge, United States Department of Labor.

Julia Ann Bush, Tower City, Pennsylvania, *pro se*.

Helen H. Cox (Howard M. Radzely, Solicitor of Labor; Donald S. Shire,  
Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor;  
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: DOLDER, Chief Administrative Appeals Judge, SMITH and  
BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals, without the assistance of counsel, the Decision and Order Denying Benefits (03-BLA-6490) of Administrative Law Judge Janice K. Bullard on a 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). Claimant filed this survivor's claim on July 11, 2002. Director's Exhibit 3. The administrative law judge

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<sup>1</sup> Claimant is the surviving spouse of the miner, Ronald Lamar Bush, who died on February 19, 2001. Director's Exhibit 4. The miner had filed a claim in 1995, which was denied in 1997 because the miner did not establish total disability. Director's Exhibit 1.

considered the evidence pursuant to 20 C.F.R. Part 718, and found that the x-ray evidence and the medical opinion evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), (a)(4). The administrative law judge further found that claimant had not established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

In response to claimant's appeal, the Director, Office of Workers' Compensation Programs (the Director), urges the Board to affirm the administrative law judge's Decision and Order as supported by substantial evidence.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 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 pursuant to 20 C.F.R. Part 718 in a survivor's claim filed 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 or that pneumoconiosis was a substantially contributing cause of death. See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 725.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. See 20 C.F.R. §718.205(c)(2), (c)(5); see also *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).<sup>2</sup>

The relevant evidence of record under 20 C.F.R. §718.205 consists of the death certificate and the hospital discharge summaries signed by Dr. Syed Shah, and medical reports by Dr. Kraynak and Dr. Sherman. Dr. Shah listed anthracosilicosis on the death certificate as an immediate cause of death, and listed pneumoconiosis as the seventh diagnosis on the discharge summary for the hospital admission which began on January 17, 2001. Director's Exhibits 4, 7, 11. Dr. Kraynak, the miner's treating physician, submitted a report dated April 29, 2003, and concluded that the miner succumbed to

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

multiple illnesses, and that coal workers' pneumoconiosis was a substantially contributing factor in the miner's death.<sup>3</sup> Director's Exhibit 13. Dr. Sherman found no evidence to suggest that a pulmonary problem contributed to death, and that the miner's death was due to complications of lymphoma. Director's Exhibit 21.

Addressing the issue of death due to pneumoconiosis, the administrative law judge observed that Dr. Shah included anthracosilicosis as the third of four causes of death on the death certificate. Director's Exhibit 4. The administrative law judge permissibly found that this was not a credible medical finding because there was no mention of anthracosilicosis or pneumoconiosis or any pulmonary or respiratory condition arising out of coal dust exposure in any of the treatment reports from the miner's last hospitalization. While anthracosilicosis was one of seven diagnoses listed in the January 24, 2001 discharge summary, the administrative law judge found there was no objective evidence in the hospital records to support that conclusion.<sup>4</sup> Director's Exhibit 11. Thus, the administrative law judge permissibly declined to credit Dr. Shah's opinion as it was unsupported by any objective evidence. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Riley v. National Mines Corp.*, 852 F.2d 197, 11 BLR 2-182 (6th Cir. 1988). (In determining whether a physician's report is sufficiently documented and reasoned in proceedings under the Act, an administrative law judge must examine the validity of the reasoning of the opinion in light of the studies conducted and the objective indications upon which the opinion or conclusion is based.)

The administrative law judge also discredited Dr. Kraynak's opinion that pneumoconiosis contributed to the miner's death. The administrative law judge found that Dr. Kraynak did not explain the nature or length of claimant's treatment, and did not explain the basis for his diagnosis, or refer to any objective studies that support his conclusion. Decision and Order at 7; *see* 20 C.F.R. §718.104. Thus, the administrative law judge permissibly found that Dr. Kraynak's opinion was poorly reasoned and unsupported by any objective evidence. *Id.*; *see Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). (An unsupported conclusion by a physician does not take the place of reasoning.)

As the administrative law judge properly discredited the only medical opinion evidence that could support claimant's burden of proof at 20 C.F.R. §718.205(c), we

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<sup>3</sup> Dr. Kraynak also opined that the miner "would have lived longer absent Coal Workers' Pneumoconiosis." Director's Exhibit 13.

<sup>4</sup> The miner's penultimate hospitalization began on January 17, 2001 and ended on January 24, 2001. Dr. Syed Shah was the miner's attending physician. Director's Exhibit 11.

further affirm her finding that claimant has failed to establish death due to pneumoconiosis at Section 718.205(c). Inasmuch as claimant has failed to establish death due to pneumoconiosis, an essential element of entitlement in this survivor's claim, we affirm the denial of benefits. *See generally Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988).

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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Judith S. BOGGS  
Administrative Appeals Judge