

BRB No. 01-0233 BLA

JULIA CAMPBELL)	
(Widow of WILLIAM CAMPBELL))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
CYPRUS CUMBERLAND RESOURCES)	
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 of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Julia Campbell, Smithfield, Pennsylvania, *pro se*.

Edward Waldman (Howard M. Radzely, Acting 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, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (2000-BLA-0458) of Administrative Law Judge Michael P. Lesniak 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).¹ The administrative

¹Claimant, Julia Campbell, is the surviving spouse of the deceased miner, William

law judge credited the miner with thirty years of coal mine employment and accepted the parties stipulation that the miner had pneumoconiosis arising out of coal mine employment. However, the administrative law judge found that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2000). Accordingly, the administrative law judge denied benefits. Claimant appeals, generally challenging the denial of benefits. Employer did not respond to claimant's appeal. The Director, Office of Workers' Compensation Programs, filed a limited response brief only for the purpose of explaining that the new black lung regulations do not affect this case.²

Campbell, who died on August 27, 1998. Director's Exhibit 31. This survivor's claim was filed on October 7, 1998. Director's Exhibit 1. The miner's had been awarded benefits on July 13, 1994. Director's Exhibit 31.

²The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the

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 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 suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; see *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 miner's death. 20 C.F.R. §718.205(c)(5) (2001).

After consideration of the administrative law judge's Decision and Order, the

Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001).

arguments raised on appeal and the relevant evidence of record, we conclude that substantial evidence supports the administrative law judge's findings that the miner's death was not due to pneumoconiosis pursuant to Section 718.205(c)(2000). Relevant to the cause of the miner's death, the administrative law judge considered the miner's death certificate, the autopsy protocol and deposition by Dr. Wecht, and the opinion of Dr. Jasnosz. Director's Exhibits 10, 11, 25, 27, 31; Claimant's Exhibit 1. The miner's death certificate, prepared by Dr. Taylor, lists the immediate cause of death as carcinoma of the colon. Although Dr. Taylor also listed chronic obstructive pulmonary disease as a significant condition, the doctor did not attribute the miner's chronic obstructive pulmonary disease to coal dust exposure, thus, the doctor's diagnosis of chronic obstructive pulmonary disease does not satisfy the definition of pneumoconiosis under 20 C.F.R. §718.201 (2001). Therefore, the administrative law judge reasonably found that the death certificate did not demonstrate that pneumoconiosis was a contributing cause to the miner's death. Decision and Order at 6.

The administrative law judge found both Drs. Wecht and Jasnosz agreed that the primary cause of the miner's death was metastatic carcinoma, and that Dr. Wecht also concluded that pneumoconiosis contributed to the miner's death. The administrative law judge acknowledged that greater weight may be accorded to Dr. Wecht's opinion as the autopsy prosector, but, within a proper exercise of his discretion, accorded Dr. Wecht's opinion little weight for several reasons. The administrative law judge rationally found Dr. Wecht's opinion was not well reasoned because the doctor failed to explain how the miner's significant smoking history affected his pulmonary health and the opinion was not well documented because the doctor did not consider the medical records compiled prior to the miner's death, which related the miner's dyspnea to his obesity and smoking history. Decision and Order at 6; Director's Exhibits 11, 31; Claimant's Exhibit 1.

The administrative law judge permissibly credited the contrary opinion of Dr. Jasnosz because the physician considered the miner's whole medical history, the effect of the miner's obesity, extensive smoking history and cancer treatment as affecting his breathing and ultimately causing the miner's death. Decision and Order at 6; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The administrative law judge therefore reasonably found that the opinion of Dr. Jasnosz, coupled with the findings of the death certificate, demonstrated that pneumoconiosis was not a substantial contributing cause of the miner's death. We affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis by a preponderance of the evidence under Section 718.205(c).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge