

BRB No. 03-0217 BLA

KATHLEEN BURKE	)	
(Widow of WILLIAM BURKE)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CYPRUS SHOSHONE COAL COMPANY	)	DATE ISSUED: 11/14/2003
	)	
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 F. Solomon, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order Denying Benefits (02-BLA-0215) of Administrative Law Judge Daniel F. Solomon rendered 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).<sup>1</sup> The administrative law

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<sup>1</sup> The 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 20 C.F.R. Parts 718, 722, 725 and 726

judge found, and the parties stipulated to, twenty-one years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718, based on the date of filing.<sup>2</sup> The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a), but insufficient to establish that pneumoconiosis was a substantially contributing cause of death pursuant to Section 718.205(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that pneumoconiosis was a substantially contributing cause of the miner's death. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), is not participating 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *see 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). For survivor's claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's 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, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see*

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(2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>2</sup> The miner filed a claim for benefits on September 28, 1992. That claim was denied on March 9, 1993 and January 11, 1995. Director's Exhibits 36-1, 36-14, 36-43. The miner's request for modification was denied on August 1, 1995 and May 6, 1997. Director's Exhibits 36-44, 36-48, 36-62. The miner died on November 28, 1997. Director's Exhibit 3. Claimant filed her survivor's claim for benefits on July 1, 2000.

*Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

Claimant contends that the evidence is sufficient to establish that pneumoconiosis was a substantially contributing factor in the miner's death based on the autopsy performed by Dr. Bathija. We disagree. Dr. Bathija diagnosed simple coal workers' pneumoconiosis on autopsy. Director's Exhibit 4. In a subsequent letter, Dr. Bathija noted that it was difficult to give a definite opinion as to whether pneumoconiosis contributed to death as he had not seen the miner, and concluded that pneumoconiosis "may" have contributed to death. Director's Exhibit 23. The pathologists of record, Drs. Perper, Naeye, Caffrey, Oesterling, all found that the miner's pneumoconiosis was too mild to have contributed to the miner's death. Director's Exhibits 24, 25, 30, 32; Employer's Exhibit 2. Drs. Dahhan, Tuteur and Renn, board certified internists and pulmonologists, also concluded that the mine's pneumoconiosis was too mild to have contributed to death. Director's Exhibits 28, 29, 31; Employer's Exhibits 1, 3. The administrative law judge accorded greater weight to the opinions of Drs. Perper, Naeye, Caffrey, Oesterling, Dahhan, Tuteur and Renn, than to the opinion of Dr. Bathija, as he found them better reasoned and documented, and based on their superior qualifications. Further, the administrative law judge noted that Dr. Bathija's opinion was equivocal and unexplained. This was reasonable. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Justice v. Island Creek Coal Co.*, 7 BLR 1-236 (1984). Thus, the administrative law judge rationally found that the evidence failed to establish death due to pneumoconiosis pursuant to Section 718.205(c).

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal, *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). In this case, contrary to claimant's contentions, the administrative law judge considered and weighed all the relevant evidence of record. His findings are reasonable, supported by the record, and in accordance with law. Consequently, we affirm the administrative law judge's finding that the evidence failed to establish that the miner's death was due to pneumoconiosis as it is supported by substantial evidence and is in accordance with law. *See Griffith*, 49 F.3d 184, 19 BLR 2-111; *Brown*, 996 F.2d 812, 17 BLR 2-135.

Accordingly, the administrative law judge's Decision and Order Denying Benefits in this survivor's claim 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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PETER A. GABAUER, Jr.  
Administrative Appeals Judge