

BRB No. 03-0279 BLA

DOLORES D. RADABAUGH)	
(Widow of JAMES W. RADABAUGH))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CONSOLIDATION COAL COMPANY)	DATE ISSUED: 11/19/2003
)	
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 Robert J. Lesnick, Administrative Law Judge, United States Department of Labor.

Dolores D. Radabaugh, Masontown, West Virginia, *pro se*.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant, the miner's widow, without the assistance of counsel, appeals the Decision and Order - Denial of Benefits (01-BLA-1160) of Administrative Law Judge Robert J. Lesnick 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).¹ The administrative law judge found at least twenty years of coal mine

¹ 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

employment established and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a)(2), (4) and 718.203(b), 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 generally contends that she is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), is not participating in this appeal.

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 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 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 into the Act by 30 U.S.C. §932(a); *O'Keefe 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 Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert denied*, 506 U.S. 1050 (1993).

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

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 administrative law judge's Decision and Order is supported by substantial evidence, and contains no reversible error. Considering the medical opinion evidence of record, the administrative law judge accorded more weight to the opinions of Drs. Reyes, Naeye, Bush, Oesterling and Renn, finding that pneumoconiosis played no role in the miner's death, than to the contrary opinion of Dr. Gaziano, because he found them better reasoned and documented. The administrative law judge properly found Dr. Gaziano's opinion that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death entitled to little weight for several reasons. First, Dr. Gaziano's brief written note stating that he believed that the stress of respiratory problems (COPD and CWP) led to the miner's pneumonia and heart attack was cursory, unexplained, and insufficiently reasoned. Second, it appeared that Dr. Gaziano relied on a claims examiner's statement that the miner had been awarded benefits on his 1982 claim based on a qualifying pulmonary function study and x-ray findings of simple pneumoconiosis. However, as the administrative law judge noted, while the miner received a state award of benefits in 1982, his federal claim for benefits was denied and the x-ray evidence had been found to be overwhelmingly negative. Third, the administrative law judge noted that Dr. Gaziano conceded on deposition that he may not have been aware of the miner's extensive smoking history when he rendered his written opinion, which Dr. Gaziano ultimately conceded was "very significant." Finally, on deposition, Dr. Gaziano acknowledged that it was possible that the miner would have suffered death in the same manner even if he did not have coal workers' pneumoconiosis.

In contrast, the administrative law judge noted that Drs. Reyes, Naeye,² Bush, Oesterling and Renn had reviewed and analyzed the relevant evidence in much greater detail, and had the benefit of examining autopsy tissue. Further, the administrative law judge noted that although Dr. Gaziano was a well-credentialed board-certified pulmonologist, Dr. Renn was similarly credentialed and Drs. Reyes, Naeye, Bush and Oesterling were board-certified pathologists. The administrative law judge's evaluation of the medical opinion evidence and his finding that it failed to establish that the miner's death was due to pneumoconiosis, based on the opinions of Drs. Reyes, Naeye, Bush, and Oesterling, was, therefore, rational, supported by substantial evidence, and in accordance with law. Decision and Order at 15; Director's Exhibits 6, 12, 13, 19; Employer's

² Although the administrative law judge found Dr. Naeye's opinion somewhat undermined by his ambiguous statements regarding the existence of pneumoconiosis, the administrative law judge nonetheless permissibly found that the opinion partially buttressed the opinions of Drs. Reyes, Bush, Oesterling and Renn. Decision and Order at 15.

Exhibits 9, 17; *see* 20 C.F.R. §718.206; *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Underwood v. ElkayMining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 31-33 (in weighing opinions, the administrative law judge is called upon to consider their quality, taking into account, among other things, the opinion’s reasoning and detail of analysis); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Schegan v. Waste Management & Processors, Inc.*, 18 BLR 1-41, 1-46 (1994); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Stark*, 9 BLR 1-36; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge