

BRB No. 04-0353 BLA

OLGA KOSICK)
(Widow of JOHN KOSICK))
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED: 11/30/2004
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Paul H. Teitler,
Administrative Law Judge, United States Department of Labor.

Olga Kosick, Frackville, 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: SMITH, McGRANERY and BOGGS, Administrative Appeals
Judges.

PER CURIAM:

Claimant¹ appeals, without representation, the Decision and Order Denying

¹ Olga Kosick is the surviving spouse of John Kosick, the miner, who died on April 25, 2002. Director's Exhibits 3, 4. During his lifetime, the miner filed three claims for benefits. Director's Exhibit 1. His most recent duplicate claim was denied because he failed to establish total pulmonary or respiratory disability. *Id.* The miner then filed a request for modification on March 29, 1999, which was also denied by Administrative Law Judge Paul H. Teitler on September 11, 2000. *Id.* Judge Teitler determined that the miner was not totally disabled by a pulmonary or respiratory impairment and therefore

Benefits (03-BLA-5687) of Administrative Law Judge Paul H. Teitler on a survivor's claim filed June 7, 2002 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). Director's Exhibit 3. The administrative law judge found, based on the parties' stipulation, that the miner had pneumoconiosis arising from twenty-nine years in coal mine employment. The administrative law judge also found, however, that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. Claimant generally appeals from the decision below. The Director, Office of Workers' Compensation Programs, responds to claimant's appeal, urging affirmance of the administrative law judge's denial of benefits pursuant to 20 C.F.R. §718.205(c).

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. *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, are supported by substantial evidence, and are 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).

To establish entitlement to survivors' 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. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). For survivor's claims filed on or after January 1, 1982, death will be considered 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 irrebutable presumption set forth at 20 C.F.R. §718.304 is applicable. 20 C.F.R. §718.205(c)(1)-(4). 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); *see Lango v. Director, OWCP*, 104 F.3d 73, 21

that the miner failed to establish a mistake in a determination of fact or change in conditions pursuant to 20 C.F.R. §725.310. Director's Exhibit 1. The denial was affirmed by the Board, *Kosick v. Director, OWCP*, BRB No. 00-1192 BLA (Sept. 27, 2001) (unpub.). *Id.* No further action was taken with respect to the miner's claim and it is not at issue herein.

BLR 2-12 (3d Cir. 1997); *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 issue on appeal, and the relevant evidence of record, we find that substantial evidence supports the administrative law judge's finding pursuant to 20 C.F.R. §718.205(c). Specifically, the administrative law judge properly found that the medical evidence of record was insufficient to meet claimant's burden of establishing that the miner's death was due to pneumoconiosis, or that pneumoconiosis contributed to or hastened the miner's death.³

In this case, the administrative law judge correctly noted that the miner's death certificate, signed by Dr. Christensen, listed the immediate cause of death as aortic, valvular heart disease and congestive cardiomyopathy. Under "Other Significant Conditions," the death certificate listed anemia, gastritis, spinal stenosis, and "COPD-Black Lung." Director's Exhibit 4; Decision and Order at 3. Because Dr. Christensen did not specify on the death certificate whether pneumoconiosis was a contributing factor to the miner's death, or otherwise offer any further opinion as to whether pneumoconiosis caused or contributed to the miner's death, the death certificate standing alone cannot be viewed as a reasoned medical finding that the miner's death was due to pneumoconiosis. *See Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988). Thus, the miner's death certificate does not meet claimant's burden of establishing death due to pneumoconiosis at 20 C.F.R. §718.205(c) or her entitlement to benefits.

The administrative law judge correctly noted that the miner's autopsy report listed the cause of death as "endocarditis involving bioprosthetic aortic valve (probably secondary to coagulase negative staph)." Director's Exhibit 6; Decision and Order at 3. Although the autopsy prosector, Dr. Christ, reported a history of clinical pneumoconiosis, the administrative law judge correctly noted that Dr. Christ "does not indicate that pneumoconiosis played any role in the miner's death." Decision and Order at 3. The

² This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit as the miner's last coal mine employment occurred in the Commonwealth of Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 1.

³ Because there is no evidence that the miner had complicated pneumoconiosis, the administrative law judge properly found that claimant cannot establish entitlement based on the irrebuttable presumption provided at 20 C.F.R. §718.304. *See* 20 C.F.R. §718.205(c)(3); Decision and Order at 6.

administrative law judge also properly found that while the miner was treated by Dr. Lugano prior to his death for severe restrictive lung disease secondary to pneumoconiosis, Dr. Lugano also did not offer an opinion in this case as to the cause of the miner's death. Director's Exhibit 5; Decision and Order at 5.

In contrast, the administrative law judge properly found that Dr. Sherman offered a reasoned and well-documented opinion that the miner's death was due to an infected heart valve and not to pneumoconiosis. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Director's Exhibit 8; Decision and Order at 5. Specifically, the administrative law judge properly credited Dr. Sherman's opinion as it was not challenged by the opinion of any other medical expert, and it was supported by the findings on autopsy. *See Clark*, 12 BLR at 1-149; Decision and Order at 5.

Consequently, we affirm the administrative law judge's determination, based on his crediting of Dr. Sherman's opinion, that the evidence fails to establish that the miner's death was due to pneumoconiosis. We therefore affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.205(c) and the denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge