

BRB No. 00-0102 BLA

OPAL POTTER)	
(Widow of TOMMY POTTER))	
)	
Claimant-Petitioner))
)	
v.)	
)	
EDD POTTER COAL COMPANY,)	DATE ISSUED:
INCORPORATED)	
)	
and)	
)	
KENTUCKY EMPLOYERS' INSURANCE)	
)	
Employer/Carrier-)	
Respondents))
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher, Jr. (Wolfe & Farmer), Norton, Virginia, for claimant.

Jeffrey D. Damron (Riley & Walters, P.S.C.), Prestonsburg, Kentucky, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order (99-BLA-0505) of Administrative Law Judge Jeffrey Tureck denying benefits in 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). The administrative law judge found the evidence insufficient 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 survivor's benefits.

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹Claimant is the widow of the miner, Tommy Potter, who died on October 9, 1997. Director's Exhibits 1, 6, 32. Claimant filed a survivor's claim on November 24, 1997. Director's Exhibit 1.

Benefits are payable on survivor's claims filed on or after January 1, 1982 only when the miner's death was due to pneumoconiosis.² See 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). However, before any finding of entitlement can be made in a survivor's claim, a claimant must establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A claimant must also establish that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. See *Boyd, supra*.

Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). We disagree. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of a miner's death under 20 C.F.R. §718.205(c)(2) in a case in which the disease actually hastens his death. See *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir.

²Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.

20 C.F.R. §718.205(c).

1993). The administrative law judge considered the death certificate signed by Dr. Modi and the relevant medical reports of Drs. Powell and Michos. In the death certificate, Dr. Modi indicated that acute cardiorespiratory arrest, acute respiratory arrest, severe bronchospasm, severe chronic lung disease, coal workers' pneumoconiosis, arteriosclerotic heart disease and acute myocardial infarction contributed to the miner's death. Director's Exhibit 6. Dr. Michos opined that the miner's prior coal mine employment did not contribute to his death. Director's Exhibits 14, 15. Dr. Powell opined that the miner died of an acute myocardial infarction. Director's Exhibit 13. In a deposition dated June 5, 1998, Dr. Powell opined that the miner "did not have [a] lung disease that would have contributed to heart disease." Director's Exhibit 32 (Dr. Powell's Deposition at 18).

The administrative law judge permissibly discredited Dr. Modi's opinion because he found it to be not well reasoned. 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); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The administrative law judge stated that Dr. Modi "did not fill out the [death certificate] form in the manner indicated [on the form]." Decision and Order at 3. The administrative law judge observed that "[i]nstead of listing an immediate cause of death, then underlying causes of death, then finally other significant conditions, [Dr. Modi] listed conditions under his own numbering scheme." *Id.* The administrative law judge stated, "[b]ased on the death certificate, it is impossible to tell what role Dr. Modi believed coal workers' pneumoconiosis played in the miner's death." *Id.* The administrative law judge further stated, "[b]ut even if the form was filled out properly, and pneumoconiosis was clearly listed as an underlying cause of death, the fact remains that death certificates contain no reasoning." *Id.* In addition, the administrative law judge stated that "[a]n explanation of the role pneumoconiosis played in the miner's death is particularly necessary in this case, since the miner's death was sudden, no autopsy was performed, he suffered from a myriad of medical problems, and virtually no medical records were generated at the time he died because he was pronounced dead minutes after arriving at the hospital." *Id.* at 4. Thus, we reject claimant's assertion that the administrative law judge violated the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), in failing to provide an adequate reason for discrediting Dr. Modi's opinion.

Claimant specifically asserts that the administrative law judge should have accorded determinative weight to Dr. Modi's opinion due to his status as the miner's treating physician. The Sixth Circuit has held that the opinions of treating physicians are entitled to greater weight than those of nontreating physicians. See *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). The Sixth

Circuit has also indicated, however, that this principle does not alter the administrative law judge's duty, as trier of fact, to evaluate the credibility of the treating physician's opinion. See *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). In the present case, the administrative law judge rationally found that Dr. Modi's opinion is insufficient to establish that the miner's death was due to pneumoconiosis because he found it to be not well reasoned. See *Clark, supra*; *Fields, supra*; *Fuller, supra*. Thus, we reject claimant's assertion that the administrative law judge should have accorded determinative weight to Dr. Modi's opinion due to his status as the miner's treating physician. Since the administrative law judge permissibly discredited the only medical evidence of record that could support a finding that pneumoconiosis hastened the miner's death, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). See *Brown, supra*; see also *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

In view of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c), an essential element of entitlement under 20 C.F.R. Part 718 in a survivor's claim, see *Trumbo, supra*; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we affirm the administrative law judge's denial of survivor's benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge