

BRB No. 99-1107 BLA

JOHNNIE GRAY	)	
(Widow of HENRY GRAY)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	
UNITED STATES DEPARTMENT	)	
OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson (Johnson, Jones, Snelling, Gilbert & Davis), Chicago, Illinois, for claimant.

Sarah M. Hurley (Henry L. Solano, 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 Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order (98-BLA-0982) of Administrative Law Judge Robert L. Hillyard 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,

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<sup>1</sup>Claimant is the widow of the deceased miner, Henry Gray, who died on April 13, 1997. Director's Exhibits 1, 2.

30 U.S.C. §901 *et seq.* (the Act). In this survivor's claim, the administrative law judge found that the existence of pneumoconiosis had been established previously, as benefits had been awarded in the miner's claim, and noted that the Director, Office of Workers' Compensation Programs (the Director), was not controverting the presence of pneumoconiosis. The administrative law judge, however, found the evidence of record insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Accordingly, benefits were denied. On appeal, claimant argues that the administrative law judge erred in denying benefits in this survivor's claim. The Director responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence.

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 benefits in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment, that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that death was caused by complications of pneumoconiosis.<sup>2</sup> See 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied* 113 S.Ct. 969 (1993); *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). The United States Court of Appeals for the Fourth Circuit has held that any condition that hastens the miner's death is a substantially contributing cause of death for purposes of Section 718.205(c)(2). See *Shuff, supra*.

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<sup>2</sup>Since the miner's last coal mine employment took place in Virginia, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

The administrative law judge considered the three medical opinions of record, noting that Drs. Long and Cander opined that pneumoconiosis did not contribute to, or hasten, the miner's death, and that Dr. Patel opined that pneumoconiosis did, in fact, hasten the miner's death.<sup>3</sup> The administrative law judge found Dr. Long's opinion was supported by the objective medical evidence and entitled to "some weight." The administrative law judge correctly noted Dr. Cander's credentials as a Board certified internist, and found that although Dr. Cander did not examine the miner, he reviewed the medical records, and opined that there is no evidence in the record that the miner's chronic pulmonary condition contributed to, or hastened, his death. Thus, the administrative law judge found this opinion supported and well explained, and accorded it "some weight". Decision and Order at 6. Considering the opinion of Dr. Patel, the administrative law judge noted that Dr. Patel used words including "may" and "probably", in finding that the miner's pulmonary condition hastened his death. Despite the fact that Dr. Patel was the miner's treating physician, the

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<sup>3</sup> Drs. Long and Cander reviewed the medical records from April 1995 to the miner's death in March 1997. These physicians found that none of the hospital records indicates that any pulmonary condition which the miner had caused, contributed to, or hastened his death. Dr. Long stated that death was due to other impairments, and that the miner's congestive heart failure was due, at least in part, to renal failure. Dr. Cander opined that the miner's death was caused by chronic renal failure and congestive heart failure caused by coronary heart disease and hypertension, and that these conditions were not causally related to coal mine employment. Dr. Cander also stated that there is no evidence in the record that the miner's chronic pulmonary condition contributed to or hastened his death. Dr. Patel, the miner's treating physician, stated that pneumoconiosis "may be" a contributing factor for congestive heart failure, and "it is more likely than not that his pneumoconiosis caused him to die sooner than he otherwise would have." Director's Exhibit 8, Claimant's Exhibit 1, Decision and Order at 7.

administrative law judge did not accord his opinion controlling weight, as he found that it was not supported by sufficient objective evidence. Furthermore, the administrative law judge found that Dr. Patel's position as treating physician had not "allowed him additional insight to which Drs. Long and Cander were not privy." Decision and Order at 6, 7. Accordingly, the administrative law judge concluded that claimant had not established death due to pneumoconiosis by a preponderance of the evidence. *See* 20 C.F.R. § 718.205(c).

Claimant first contends that the administrative law judge erred in crediting the opinions of Drs. Cander and Long over the opinion of Dr. Patel because Drs. Cander and Long found no evidence of a chronic lung disease, when the miner had previously established a totally disabling chronic lung condition in his claim. Claimant specifically argues that Dr. Cander's conclusion, that none of the medical records he reviewed shows evidence of any chronic pulmonary disease, is contrary to the facts as found in the miner's case and therefore his opinion is entitled to little, if any, weight. Contrary to claimant's contention, the administrative law judge properly noted that neither Dr. Cander nor Dr. Long denied the presence of pneumoconiosis, but merely found that, from a review of the records, no pulmonary condition complicated the miner's final illness and death from renal failure and congestive heart failure. Decision and Order at 6.<sup>4</sup> Moreover, as the presence or absence of a totally disabling respiratory impairment is not the relevant inquiry at Section 718.205(c), we find no error in the administrative law judge's decision to accord weight to the opinions of Drs. Long and Cander. *See Trumbo, supra*.

Claimant next specifically argues that neither Dr. Cander nor Dr. Long actually "provided a reasoned answer to the hastening question." Claimant asserts that although Dr. Long opined that coal workers' pneumoconiosis did not contribute to the miner's death, she provided no explanation as to how she reached her conclusion. Thus, claimant argues, her opinion is insufficient to constitute substantial evidence. We disagree. The administrative law judge permissibly accorded weight to this report, because Dr. Long reviewed the miner's medical records for the two years before his death and concluded that there was no evidence in the medical records that the miner's respiratory impairment contributed to his death. Director's Exhibit 6. We, therefore, affirm the administrative law judge's findings with

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<sup>4</sup> Dr. Long's report specifically noted that the miner had been receiving Federal Black Lung benefits at his death. She opined, however, that: "Information in the file does not support a finding that coal workers' pneumoconiosis caused, contributed to or hastened this man's death." Director's Exhibit 6. Dr. Cander also noted the award of Federal Black Lung benefits to the miner, and reviewed the medical records from April 12, 1995 to April 13, 1997, the date of the miner's death. Dr. Cander found: "There is no evidence in the available record that Mr. Gray's chronic pulmonary condition contributed causally to or hastened his death." Director's Exhibit 16.

respect to Dr. Long's report. Claimant also argues that Dr. Cander's opinion is entitled to little weight at Section 718.205(c)(2). Like Dr. Long, Dr. Cander stated that there was no indication in the recent medical records that any chronic lung disease played any part in the miner's final illness and death. Director's Exhibit 16. The administrative law judge specifically rejected claimant's argument, made before him, that neither Dr. Cander nor Dr. Long addressed the issue of whether pneumoconiosis hastened the miner's death, finding that both physicians addressed the hastening issue. Decision and Order at 6, n. 2. *See Shuff, supra*. We, therefore, affirm the administrative law judge's findings with respect to Dr. Cander's report.

Finally, claimant asserts that the administrative law judge erred in finding Dr. Patel's opinion equivocal. The administrative law judge noted that Dr. Patel, the miner's treating physician, opined that pneumoconiosis "may be" a contributing factor for congestive heart failure, and "it is more likely than not that his pneumoconiosis caused him to Director's Exhibit sooner than he otherwise would have." Director's Exhibit 8, Claimant's Exhibit 1, Decision and Order at 7. While essentially finding Dr. Patel's opinion equivocal, the administrative law judge also permissibly found that Dr. Patel's opinion was poorly supported and poorly explained, and that it was not shown that his position as the miner's treating physician allowed him additional insight which Drs. Cander and Long lacked. *Id; Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993). Thus, the administrative law judge properly found that Dr. Patel's opinion was entitled to limited weight. Decision and Order at 7. In light of the foregoing, we affirm the administrative law judge's finding that claimant did not establish by a preponderance of the evidence that the miner's pneumoconiosis caused, contributed to, or hastened his death. We, therefore further affirm the denial of benefits. Decision and Order at 7; *see Shuff, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH

Administrative Appeals Judge

MALCOLM D. NELSON, Acting  
Administrative Appeals Judge