

BRB No. 03-0389 BLA

SANDRA WELLS)	
(Widow of DAVID WELLS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: 10/30/2003
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Survivor's Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Jennifer U. Toth (Howard M. Radzely, Acting 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: DOLDER, Chief Administrative Appeals Judge, HALL and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (02-BLA-02134) of Administrative Law Judge Richard A. Morgan denying a request for modification 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 Accepting the parties' stipulation, the administrative law judge credited claimant with fourteen years of coal mine employment and found that claimant failed to establish, by a preponderance of the evidence, that coal workers' pneumoconiosis significantly contributed to the miner's death pursuant to 20 C.F.R. §718.205(c) or that a mistake in a determination of fact was made in the prior denial of benefits pursuant to 20 C.F.R. §725.310.² Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in finding Dr. Younes's opinion equivocal and in relying on the opinions of Drs. Caffrey, Hutchins, and Bush to find that pneumoconiosis did not hasten the miner's death, in violation of the doctrine of collateral estoppel. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the denial of benefits.

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, David A. Wells, who died on January 18, 1997. Director's Exhibits 1, 9. The miner had previously been awarded benefits in a Decision and Order issued by Administrative Law Judge Robert G. Mahony on June 18, 1996. Director's Exhibit 27. On March 14, 1997, claimant filed a survivor's claim that was denied by Administrative Law Judge Daniel L. Leland. Director's Exhibit 73. The Board reversed Judge Leland's finding with regard to the identification of the responsible operator, dismissed Expansion Coal Company as the responsible operator, and affirmed Judge Leland's findings on the merits of claimant's entitlement to benefits. *Wells v. Expansion Coal Co.*, BRB Nos. 99-0970 BLA and 99-0970 BLA-A (Sep. 29, 2000) (unpublished). On September 20, 2001, claimant filed the instant petition for modification. Director's Exhibit 89.

²The 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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate, by a preponderance of the evidence, that the miner had pneumoconiosis arising out of coal mine employment, and that the death was due to pneumoconiosis. See 20 C.F.R. §§718.202(a); 718.203; 718.205(a)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2), (c)(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); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

Claimant argues that in violation of the doctrine of collateral estoppel, the administrative law judge erred in discrediting Dr. Younes's opinion and in giving greatest weight to the opinions of Drs. Caffrey, Hutchins, and Bush. These physicians stated, in part, that the miner's pulmonary impairment was due to cigarette smoking, not coal dust exposure, which is contrary to the finding made in the living miner's claim. Claimant asserts that by relying on the opinions of Drs. Caffrey, Hutchins and Bush, the administrative law judge "essentially found that the [miner's] pulmonary impairment was not due to his coal dust exposure" which "precluded the administrative law judge from finding that pneumoconiosis had hastened the decedent's death." Claimant's Brief at 27.

Claimant's arguments are without merit. The doctrine of collateral estoppel does not apply, as the issue in this survivor's claim does not concern the existence of pneumoconiosis, but rather whether pneumoconiosis was a causal factor in the miner's death. In addition, evidence specifically addressing this issue, which was not available in the miner's claim, was developed and submitted in conjunction with the survivor's claim and formed the basis of the findings with respect to the cause of the miner's death. See *N.A.A.C.P., Detroit Branch v. Detroit Police Officers Association*, 821 F.2d 328 (6th Cir. 1989); *Virginia Hospital Association v. Baliles*, 830 F.2d 1308 (4th Cir. 1987), *appeal after remand* 868 F.2d 653, *reh'g denied, certiorari granted in part* 110 S.Ct. 49 (1989), *aff'd Wilder v. Virginia Hospital Association*, 110 S.Ct. 49 (1990).

More importantly, the administrative law judge acted rationally in discrediting the evidence which could satisfy claimant's burden of proof under Section 718.205(c). Regarding Dr. Younes's newly submitted opinion, claimant asserts that the administrative law judge erred in determining that it did not support a finding of death due to pneumoconiosis. Claimant relies on Dr. Younes's response to a question posed to him during his deposition:

Q. And you remember from your treatment of him and from the records that you've accumulated and the test results that the chronic obstructive

pulmonary disease would have hastened the death and the chronic obstructive pulmonary disease would be related, at least in part, to his coal mine dust exposure; is that correct?

A. That's correct.

Claimant's Brief at 23; Claimant's Exhibit 1 at 12.

While the administrative law judge acknowledged Dr. Younes's status as the miner's treating physician and his conclusion that the miner's cardiac arrest was hastened by chronic obstructive pulmonary disease, Decision and Order at 5, 7, the administrative law judge correctly noted that Dr. Younes also indicated that the miner "had extremely poor lungs...chronic obstructive pulmonary disease exacerbation....that *may* have precipitated his heart attack." Decision and Order at 7; Claimant's Exhibit 1 at 11. The administrative law judge also cited the following exchange from Dr. Younes's deposition:

Q. It is your opinion that due to the lung condition that the host, which would have been his body, was a weakened state such that he was more susceptible to his heart attack, is that correct?

A. What I'm saying is, that the fact that he had an exacerbation of COPD which would have caused him to have lower oxygen level than normal. And that can, in someone whose got underlying coronary, it can accelerate him having a heart attack or arrhythmia and that *may* be what happened here.

Q. So you believe that the COPD *probably* hastened the death?

A. That's what I think.

Id. (emphasis added). Given Dr. Younes' testimony that the miner's condition "may" have contributed to his fatal heart attack, the administrative law judge reasonably found Dr. Younes's opinion equivocal and, therefore, insufficient to establish that pneumoconiosis hastened the miner's death, despite his status as the miner's treating physician.³ See *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995);

³Claimant also argues the administrative law judge erred in finding that Dr. Younes did not rule out that the miner's chronic obstructive pulmonary disease was the result of the miner's smoking habit and did not consider claimant's smoking history. Claimant's Brief at 24; Claimant's Exhibit 1 at 10, 11. Because the administrative law

Justice v. Island Creek Coal Co., 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); Decision and Order at 7.

The administrative law judge also properly found that the evidence submitted prior to the miner's request for modification failed to support a finding that pneumoconiosis hastened the miner's death. The administrative law judge acted within his discretion in determining that the reports of Drs. Dennis, Perper and Green, the only opinions that arguably support a finding that pneumoconiosis hastened the miner's death, were not well reasoned because the physicians failed to provide a comprehensive explanation for their conclusions and did not fully address the miner's lengthy smoking history. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985). Thus, we affirm the administrative law judge's finding that the evidence of record does not support a finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). We must also affirm, therefore, the administrative law judge's finding that claimant failed to establish a mistake in a determination of fact pursuant to Section 725.310 and the denial of benefits in this survivor's claim. *Brown*, 996 F.2d 812, 17 BLR 2-135; *Trumbo*, 17 BLR 1-85, 1-87-88.

judge rationally determined that Dr. Younes's opinion regarding the cause of the miner's death was equivocal, we need not address claimant's arguments. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge