

BRB No. 99-0287 BLA

RUTH A. OCHS)	
(Widow of ALTON K. OCHS))	
)	
Claimant-Petitioner))
)	
v.)	
)	
HEGINS MINING COMPANY)	DATE ISSUED:
)	
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 on Remand of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Lynne G. Bressi (Law Offices of Charles A. Bressi, Jr.), Pottsville, Pennsylvania, for claimant.

James E. Pocius (Marshall, Dennehey, Warner, Coleman & Goggin), Scranton, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (98-BLA-1128) of Administrative Law Judge Ainsworth H. Brown 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, 30 U.S.C. §901 *et seq.* (the Act).¹ In the initial

¹Claimant is Ruth A. Ochs, the miner's widow. The miner, Alton K. Ochs, filed several claims for benefits which were ultimately denied on March 23, 1994.

Decision and Order, the administrative law judge found that the parties stipulated that the miner had thirty-three years of qualifying coal mine employment and pneumoconiosis, but that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, the Board vacated the administrative law judge's findings pursuant to Section 718.205(c) and remanded the case for the administrative law judge to reconsider the medical opinion evidence relevant to the cause of the miner's death. *Ochs v. Hegins Mining Co.*, BRB No. 96-1129 BLA (May 29, 1997)(unpub.).

On remand, the administrative law judge in the instant Decision and Order incorporated his previous findings that were not vacated by the Board, as well as the Board's Decision and Order, issued on March 23, 1994, affirming his denial of the miner's claim. He reconsidered the medical opinion evidence and found that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in weighing the medical opinion evidence of record and that the administrative law judge was unfairly biased against claimant. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, responds, declining to submit a brief on 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 based on a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that death was due to, or hastened by, pneumoconiosis. See 30 U.S.C. §901(a); 20 C.F.R. §§718.1, 718.205, 725.201; *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990);

Director's Exhibit 25, 26. The miner died on May 1, 1994 and claimant filed a survivor's claim for benefits on July 18, 1994. Director's Exhibit 1, 9.

Smith v. Camco Mining Inc., 13 BLR 1-17 (1989); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

Claimant initially contends that the administrative law judge erred in weighing Dr. Bindie's opinion because the administrative law judge failed to discuss all of the relevant evidence with regard to Dr. Bindie's testimony and because the administrative law judge failed to give any rationale or basis for his findings. Claimant's Brief at 5-7. Dr. Bindie conducted the miner's autopsy and concluded that the miner's pneumoconiosis was a substantial contributing cause of his death. Director's Exhibit 12. The administrative law judge noted that Dr. Bindie, as the autopsy prosector, relied on his interpretation of the lung tissue slides, as well as his observations of the lungs, in making findings regarding the cause of the miner's death. Decision and Order on Remand at 3. The administrative law judge further noted Dr. Bindie's qualifications as a Board-certified forensic pathologist and acted within his discretion in concluding that Dr. Bindie's opinion is less persuasive than the opinions of Drs. Galgon, Levinson, Dittman, Naeye and Shane, who opined that the miner's pneumoconiosis did not hasten his death, because their opinions regarding the degree of the miner's lung function impairment at the time of his death were more reasoned based on the evidence of record.² and better-supported by the uncontradicted objective evidence of record.³ Decision and Order on Remand at 3-

²The administrative law judge also found that the teaching credentials possessed by Drs. Shane and Naeye, Board-certified pathologists, indicate they are significantly qualified in the area of pathology. See *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993).

³The record contains several pulmonary function studies which were performed in 1992. Other than a study dated May 6, 1992 which yielded results which were non-qualifying for total disability pursuant to 20 C.F.R. §718.204(c)(1) and a study dated March 16, 1992 which yielded qualifying results, all of the remaining 1992 studies were challenged as being invalid by reviewing physicians. Claimant's Exhibits 4, 6, 7, 9; Employer's Exhibits 10-12.

4; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Consequently, we reject claimant's contention and affirm the administrative law judge's weighing of Dr. Bindie's opinion pursuant to Section 718.205(c).

Claimant next contends that the administrative law judge erred in weighing Dr. Kraynak's opinion pursuant to Section 718.205(c). Claimant's Brief at 8-11. The administrative law judge considered Dr. Kraynak's opinion, that the miner's pneumoconiosis "weakened his respiratory system and made [him] less able to fight off his disease," and rationally found the opinion "limited" due to Dr. Kraynak's minimal qualifications and, thus, less persuasive than the opinions of Drs. Galgon, Levinson, Dittman and Naeye, all of whom possessed superior credentials.⁴ Decision and Order on Remand at 3; *Parulis v. Director, OWCP*, 15 BLR 1-28 (1991); *Lafferty, supra*; *Clark, supra*; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Perry, supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). As a result, we reject claimant's contentions regarding Dr. Kraynak's opinion and affirm the administrative law judge's weighing of Dr. Kraynak's opinion pursuant to Section 718.205(c).

Claimant next contends that the administrative law judge erred in weighing Dr. Simelaro's opinion pursuant to Section 718.205(c). Claimant's Brief at 8-11. Dr. Simelaro, in a report dated August 31, 1995, stated that he reviewed pulmonary function studies dated October 8, 1979, May 30, 1991, July 1, 1991 and May 5, 1992 and opined that these "four spirometries indicate a developing restriction...due to increasing fibrosis of C.W.P." Claimant's Exhibit 4. Dr. Simelaro concluded that the miner's death was "significantly contributed to by his deteriorating lung function due to Coal Workers' Pneumoconiosis." *Id.* The administrative law judge considered this opinion and acted within his discretion in finding it less persuasive than the opinions of Drs. Galgon, Levinson, Dittman and Naeye because, unlike the previously mentioned physicians, Dr. Simelaro either ignored or was not provided with the opinions of the physicians who invalidated the results of several of the pulmonary function studies that he considered. Decision and Order on Remand at 2; *Lafferty, supra*; *Clark, supra*; *Dillon, supra*. Consequently, we reject claimant's contentions and affirm the administrative law judge's weighing of Dr. Simelaro's opinion pursuant to Section 718.205(c).

⁴Dr. Kraynak is Board-eligible in Family Medicine. Claimant's Exhibit 4. Drs. Levinson, Galgon and Dittman are Board-certified in Internal Medicine and Drs. Naeye and Shane are Board-certified pathologists. Director's Exhibit 13; Employer's Exhibits 1, 3, 5, 7.

Finally, claimant contends that the administrative law judge was unfairly biased towards her and that he did not attempt to follow the Board's remand order. Claimant's Brief at 11-12. Inasmuch as the administrative law judge considered all of the evidence of record relevant to the cause of the miner's death and his weighing of that evidence is supported by substantial evidence, we reject claimant's contention that the administrative law judge was biased in his consideration of the claim. See *Hall v. Director, OWCP*, 12 BLR 1-80 (1988). As a result, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) and the denial of benefits on the survivor's claim.

Accordingly, the administrative law judge's Decision and Order on Remand 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