

BRB No. 99-0583 BLA

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

Appeal of the Decision and Order - Denial of Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Jeffrey S. Goldberg (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 the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order - Denying Benefits (98-BLA-0647) of

¹ Claimant, Bertha Ida Reichert, filed a survivor's claim for benefits on December 16, 1996. Director's Exhibit 1. Mrs. Reichert is the widow of Garfield Reichert, the miner, who died on November 16, 1996. Director's Exhibit 5. The miner filed his first application for benefits on May 15, 1978, which was denied on August 31, 1979. Director's Exhibit 24. Subsequently, the miner filed a duplicate claim on December 8, 1981, which was denied by Administrative Law Judge Anthony J. Iacobo on June 6, 1986. Director's Exhibit 24. The record is devoid of evidence indicating that the miner pursued this claim.

Administrative Law Judge Joseph E. Kane 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). Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge credited the parties' stipulation that the miner worked in qualifying coal mine employment for ten years. Next, the administrative law judge found that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), but 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, claimant argues that the administrative law judge erroneously failed to find that the miner's death was due to pneumoconiosis under Section 718.205(c). The Director, Office of Workers' Compensation Programs, (the Director) responds, urging affirmance of the denial of benefits.²

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 the 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).

² We affirm the administrative law judge's determinations regarding length of coal mine employment and pursuant to 20 C.F.R. §718.202(a)(1) inasmuch as these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 3, 4.

To establish entitlement to benefits on a survivor's claim filed on or after January 1, 1982, a claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of coal mine employment,³ and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(a), 718.205(a). Death will be considered due to pneumoconiosis if the evidence establishes that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2), (4). The United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it actually hastens the miner's death. *See 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).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error therein. With respect to Section 718.205(c)(2), claimant argues that the administrative law judge erred by failing to credit Dr. Russell's opinion that the miner's pneumoconiosis was a contributory cause of his death because Dr. Russell treated the miner for approximately fifteen years, considered the miner's social, occupational, and medical histories, and reviewed diagnostic tests. Claimant also contends that a finding of death due to pneumoconiosis is further supported by the miner's death certificate which includes anthracosilicosis as a cause of death and hospital discharge summaries during 1995 and 1996 which include repeated references to coal workers' pneumoconiosis. Claimant contends that the administrative law judge erred in giving greater weight to Dr. Spagnolo's opinion as he never examined the miner and as his opinion is based primarily on a review of pulmonary function studies performed in 1979 and 1985 and blood gas studies performed in 1979, 1980, and 1985, eleven to seventeen years prior to the miner's death in 1996. Additionally,

³ Contrary to the Director's assertion, the administrative law judge failed to determine whether the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). *See Director's Response Brief* at 3. Nevertheless, we deem this error harmless, *see Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), in light of our affirmance of the administrative law judge's determination that claimant failed to establish that the miner's death was due to pneumoconiosis under 20 C.F.R. §718.205(c).

claimant contends that although Dr. Spagnolo indicates that he was provided with records concerning the miner's several hospitalizations during 1995 and 1996, he did not refer to those records in formulating his opinion. Likewise, claimant contends that Dr. Spagnolo did not have the opportunity to review the most recent medical report of the miner's treating physician, or the positive interpretations of the September 1996 x-ray.

Upon reviewing the medical evidence, the administrative law judge found that the death certificate could not establish death due to pneumoconiosis as it was not signed by a physician or supported by any medical opinion of record. Further, the administrative law judge found that Dr. Russell's opinion, the only opinion that found death due to pneumoconiosis, was not well-reasoned or well-documented because Dr. Russell failed to provide any specific substantiation for his opinion, failed to provide specific findings and failed to list objective laboratory testing upon which he relied. Additionally, the administrative law judge found that Dr. Spagnolo, whose opinion was better reasoned and documented and who found that death was not due to pneumoconiosis, was better qualified than Dr. Russell.⁴ Accordingly, based upon this review of the medical evidence, the administrative law judge found that claimant had failed to establish that the miner's death was due to pneumoconiosis.

In the instant case, Dr. Russell diagnosed "chronic obstructive pulmonary disease associated with coal workers' pneumoconiosis" based on the miner's "occupational history of working in the coal industry for greater than 10 years, his chest x-ray findings, and his physical findings." Claimant's Exhibit 2. As to the cause of death, Dr. Russell opined that the medical evidence in this case as well as his own findings at the time of the miner's death support a finding that coal workers' pneumoconiosis was a contributory cause of the miner's

⁴ Dr. Spagnolo is Board-certified in internal and pulmonary medicine whereas Dr. Russell is Board-certified in osteopathic medicine. Director's Exhibit 28; Claimant's Exhibit 2.

death.⁵

Although it is well established that the opinions of treating physicians merit consideration, the Third Circuit court has held, “[t]he mere statement of a conclusion by a physician without any explanation of the basis for that statement, does not take the place of the required reasoning.” *Lango*, 104 F.3d at 577, 21 BLR at 2-20; *see also Grigg v. Director, OWCP*, 28 F.3d 416, 420, 18 BLR 2-299, 2-307 (4th Cir. 1994). In the instant case, the administrative law judge discounted Dr. Russell’s opinion inasmuch as Dr. Russell failed to discuss the objective laboratory tests upon which he relied, failed to provide specific substantiation for his opinion, and failed to discuss the clinical findings that served as the basis for his opinion. This was rational. Decision and Order at 7; Claimant’s Exhibit 2; Director’s Exhibit 28; *Lango, supra*; *Kertesz v. Director, OWCP*, 788 F.2d 158, 9 BLR 2-1 (3d Cir. 1986); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 537, 21 BLR 2-323, 2-341 (4th Cir. 1998). Accordingly, inasmuch as the administrative law judge permissibly required Dr. Russell to provide more than a conclusory statement before finding that pneumoconiosis contributed to the miner’s death, we affirm his discrediting of Dr. Russell’s opinion. Likewise, contrary to claimant’s argument the administrative law judge’s finding that the death certificate did not establish death to pneumoconiosis is also affirmed. *See Lango, supra*. Nor, contrary to claimant’s argument, did the hospital discharge summaries referring to the presence of coal workers’ pneumoconiosis establish that death was due to pneumoconiosis. *See Lango, supra*.

Because we affirm the administrative law judge’s finding that the only medical

⁵ In a letter dated June 3, 1998, Dr. Russell stated: As to the cause of death in this individual, there’s no question that as stated above Garfield suffered from a combination of medical problems and [in] my opinion the primary cause of death was atherosclerotic heart disease associated with the lymphoproliferative disorder as well as a bladder and prostate carcinoma. In addition however and as a contributory cause coal workers’ pneumoconiosis must be included. The medical evidence in this case supports that as did my medical findings at the time of his death. Claimant’s Exhibit 2.

evidence which could support a finding of death due to pneumoconiosis is not reasoned, we need not address claimant's arguments regarding Dr. Spagnolo's opinion. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994) *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). Therefore, inasmuch as the administrative law judge's determination that claimant failed to satisfy her burden of establishing that pneumoconiosis substantially contributed to or hastened the miner's death is rational, contains no reversible error, and is supported by substantial evidence, we must affirm the administrative law judge's Section 718.205(c) finding. *See Lukosevich, supra; Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge