

BRB No. 00-1211 BLA

MAE L. ROBINSON)
(Widow of CLAUDE H. ROBINSON))

Claimant-Petitioner)

v.)

ARMCO INCORPORATED/)
AK STEEL CORPORATION)

Employer-Respondent)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS,))
UNITED STATES DEPARTMENT)
OF LABOR)

Party-in-Interest)

DATE ISSUED: _____

DECISION and ORDER

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

Belinda S. Morton, Fayetteville, West Virginia, for claimant.

Anthony J. Cicconi (Shaffer & Shaffer), Charleston, West Virginia, for employer.

Edward Waldman (Howard M. Radzely, Acting 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: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (00-BLA-0333) of Administrative Law Judge Jeffrey Tureck (the administrative law judge) on a survivor's

claim¹ 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).² The administrative law judge

¹Claimant is the surviving spouse of the miner, Claude H. Robinson. The miner's death certificate indicates that he died on March 2, 1999 due to respiratory arrest, pulmonary embolus (probable), and chronic obstructive pulmonary disease with pneumonia. End stage renal disease and generalized atherosclerotic disease are listed as other significant conditions contributing to death but not resulting in the underlying causes given. Director's Exhibit 8. Claimant filed the instant claim on March 10, 1999. Director's Exhibit 1.

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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at

initially noted that the miner had been awarded benefits under the Act pursuant to a claim he had filed. On the merits of the instant survivor's claim, the administrative law judge found that claimant failed to meet her burden to establish that the miner's death was due to pneumoconiosis under 20 C.F.R. Part 718. Specifically, the administrative law judge found that there was no credible evidence of record that the miner's death was due in any way to his pneumoconiosis. Accordingly, benefits were denied.

20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

On appeal, claimant contends that the administrative law judge “failed to give proper weight to the reasoned legal opinion of [Administrative Law] Judge [Robert M.] Glennon.” Claimant’s Brief at 2.³ Claimant also generally relies on Dr. Gaziano’s opinion, that the miner had pneumoconiosis and that pneumoconiosis was a substantially contributing cause or factor in the miner’s death, *see* Director’s Exhibit 11, in support of her assertion that she is entitled to benefits. Employer responds, and seeks affirmance of the decision below. The Director, Office of Workers’ Compensation Programs, has not filed a brief in the 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 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, such as in the instant case, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c); *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). Under 20 C.F.R. §718.205(c)(2), death will be considered to be due to pneumoconiosis if pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death. Pursuant to the revised regulation at 20 C.F.R. §718.205(c)(5), 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).

Claimant contends that the administrative law judge failed to give proper weight to Judge Glennon’s decision awarding benefits in the miner’s claim, and also generally relies on Dr. Gaziano’s opinion in support of her claim. Employer, in response, contends that the evidence “simply did not point toward pneumoconiosis as the cause of the miner’s death.” Employer’s Brief at 6. Employer argues that claimant has not alleged any reversible error or mistake in the administrative law judge’s decision.

³In 1989, Administrative Law Judge Robert M. Glennon awarded benefits in the miner’s claim. Director’s Exhibit 24-27. The Board affirmed this award of benefits in *Robinson v. Armco, Inc.*, BRB No. 89-0290 BLA (May 21, 1991)(unpublished). Director’s Exhibit 24-49.

The limited scope of the Board's review of an administrative law judge's Decision and Order necessarily requires a petitioner to identify specific legal or factual errors therein. *See Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). In the instant case, claimant alleges that the administrative law judge did not accord proper weight to the fact that the miner was awarded benefits during his lifetime, in finding that claimant failed to establish that the miner's death was due to pneumoconiosis. Claimant's Brief at 2. We thus disagree with employer's argument that claimant fails to allege any error in the administrative law judge's decision, and hold that claimant has effectively invoked the Board's review of the administrative law judge's findings. 20 C.F.R. §802.211(a), (b).

We affirm, however, the administrative law judge's denial of benefits in the instant case as it is supported by substantial evidence, rational, and in accordance with law. The evidence of record relevant to the cause of the miner's death consists of the following: the miner's death certificate, Director's Exhibit 8, *see supra* at n.1; the records from the miner's hospitalization on March 1, 1999, Director's Exhibit 10;⁴ and the opinions of Drs. Gaziano,⁵

⁴A partially legible hand-written "History and Physical Examination" form indicates that the miner was seen by a physician on March 1, 1999 at the Charleston Area Medical Center in Charleston, West Virginia. A typed "Admissions Form" dated March 1, 1999 indicates that the miner was admitted to the Charleston Area Medical Center on March 1, 1999 at "08:50" and lists as the reason for the visit "End-stage renal disease Clotted AV Graft." Director's Exhibit 10. The miner's death certificate indicates that the place of death was "CAMC Gen Div." in Charleston, West Virginia, with death occurring on March 2, 1999 at 10:33 am. The administrative law judge found:

Unfortunately, no records of a terminal hospitalization are in evidence. There is an illegible hand-written note from the Charleston Area Medical Center from March 1, 1999 (DX 10), but there is no entry for March 2, the day of his death. Nor was an autopsy performed.

Decision and Order Denying Benefits at 3.

⁵Providing answers on a questionnaire, Dr. Gaziano responded "yes" to the following questions: "Did the miner have pneumoconiosis?," "Was the miner totally disabled by pneumoconiosis prior to his death?," and "Was pneumoconiosis a substantially contributing cause or factor leading to miner's death?." He answered "no" to the following questions: "Was miner's death due to pneumoconiosis?," "Was miner's death caused by complications of pneumoconiosis?," and "Did the miner have complicated pneumoconiosis?." Dr. Gaziano provided the following comment:

Zaldivar⁶ and Fino,⁷ Director's Exhibit 11, Employer's Exhibits 1, 2, respectively. Because Dr. Gaziano alone linked the miner's death to his pneumoconiosis, his opinion is the only evidence of record which could support claimant's burden.

The administrative law judge properly found that Dr. Gaziano's opinion was not entitled to any weight for several reasons: First, the administrative law judge found that the opinion was conclusory, consisting of single-word answers to six questions and a short comment "which explains nothing," Decision and Order Awarding Benefits at 3; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988). Secondly, the administrative law judge found that Dr. Gaziano provided contradictory answers and thus, "[I]t is impossible to determine the role Dr. Gaziano believes pneumoconiosis played, if any, in the miner's death." Decision and Order Denying Benefits at 3; see *Hopton v. U.S. Steel Corp.*, 7 BLR 1-12 (1984). Thirdly, the administrative law judge noted that after indicating in his "Comment" that the miner had pneumoconiosis, Dr. Gaziano thereafter attributed the miner's death to pneumonia and chronic obstructive lung disease and did not mention pneumoconiosis as a cause of death. See Director's Exhibit 11. The administrative law judge thereby offered several reasons in support of his finding that Dr. Gaziano's opinion, the only medical evidence which, if fully credited, could meet claimant's burden at 20 C.F.R. §718.205(c), was not

The claimant had cwp and moderate to severe pulmonary impairment at time of death according to death certificate. Death was due to respiratory causes due to pneumonia and chronic obstructive pulmonary disease.

Director's Exhibit 11.

⁶Dr. Zaldivar opined that claimant did not have coal workers' pneumoconiosis nor any dust related lung disease. He attributed the miner's death to pneumonia which occurred because the miner was debilitated by all of his systemic illnesses, which included severe anemia for which the miner had several blood transfusions. Dr. Zaldivar added that the miner's anemia was due to both chronic gastrointestinal blood loss and renal failure. He found that death was neither caused nor precipitated by pneumoconiosis or by the miner's previous coal mine employment. Employer's Exhibit 1.

⁷Dr. Fino opined that the miner did not suffer from an occupationally acquired pulmonary condition as a result of exposure to coal mine dust. Dr. Fino attributed the miner's death to multiple medical problems which included pneumonia, chronic renal failure and heart attacks. Dr. Fino added that the miner's inhalation of coal mine dust did not cause, contribute to, or hasten his death. Dr. Fino also indicated that even assuming the presence of pneumoconiosis, his conclusions would remain the same. Employer's Exhibit 2.

credible. We thus affirm the administrative law judge's finding that the medical evidence fails to establish that the miner's death was due to pneumoconiosis under 20 C.F.R. §718.205(c).

We next address claimant's assertion that the administrative law judge failed to accord proper weight to Judge Glennon's decision awarding benefits in the miner's claim. The administrative law judge, having weighed the evidence relevant to the cause of the miner's death, concluded as follows:

Therefore, regardless of whether the miner had pneumoconiosis (and for the purposes of this decision I assume he did), there is no credible evidence in the record that his death was due in any way to that disease. Therefore, this claim must be denied.

Decision and Order Denying Benefits at 4. A reasonable inference from the administrative law judge's opinion is that his assumption that the miner had pneumoconiosis was based on Judge Glennon's decision. In any event, the fact remains that the administrative law judge properly determined, within his discretion, that there is no credible evidence of record that the miner's pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that it hastened death. *See* discussion, *supra*; 20 C.F.R. §718.205(c)(2), (5). Claimant cannot, therefore, establish entitlement to survivor's benefits in the instant case.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY

Administrative Appeals Judge