

BRB No. 01-0148 BLA

M. YVONNE PRICE )  
(Widow of THOMAS PRICE) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 )  
BETH ENERGY MINES, INCORPORATED ) 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 Upon Remand of Ralph A. Romano,  
Administrative Law Judge, United States Department of Labor.

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

A. Judd Woytek (Marshall, Dennehey, Warner, Coleman & Goggin),  
Bethlehem, Pennsylvania, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and  
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order Upon Remand (98-BLA-1282) of Administrative Law Judge Ralph A. Romano 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).<sup>1</sup> The administrative law judge

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<sup>1</sup> The 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. 80,107 (2000) to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

found twenty years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>2</sup> This case is on appeal to the Board for the second

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Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief 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, determines that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Association 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 Association 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.

<sup>2</sup> The miner filed his initial claim for benefits on December 9, 1976, which was denied by the district director. Director's Exhibit 24. The miner filed a second claim for benefits on January 29, 1984. Director's Exhibit 24. Benefits were awarded on April 29, 1987, but were offset by state benefits which the miner was already receiving. Director's Exhibit 24. The

time. Pursuant to the prior appeal by employer, the Board affirmed the administrative law judge's finding that the evidence was sufficient to establish the existence of pneumoconiosis, but vacated the administrative law judge's finding that pneumoconiosis hastened the miner's death and remanded the case for reconsideration of the evidence on that issue. *Price v. Beth Energy Mines, Inc.*, BRB No. 99-0714 BLA (Apr. 14, 2000)(unpub.). On remand, the administrative law judge concluded that the evidence of record was insufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner's death and denied benefits.

On appeal, claimant contends that the administrative law judge erred in not finding that the opinion of Dr. Delgalvis established that the miner's death was due to pneumoconiosis. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate in this 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). For survivor's claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); see *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

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miner died on September 14, 1997 and the widow filed her survivor's claim on October 1, 1997. Director's Exhibits 1, 3.

After consideration of the Decision and Order and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial evidence and contains no reversible error. Noting that the Board had remanded this case for reconsideration of Dr. Delgalvis's opinion, specifically, her deposition testimony, the administrative law judge accorded little weight to Dr. Delgalvis's opinion that pneumoconiosis contributed to the miner's death: because it was not well reasoned or well documented, because Dr. Delgalvis failed to explain her conclusion, failed to personally perform any pulmonary function studies on the miner, failed to independently diagnose the existence of coal workers' pneumoconiosis, and failed to render an independent opinion as to whether the miner's death was due to pneumoconiosis. In addition, the administrative law judge found that Dr. Delgalvis's opinion was entitled to little weight because she stated that she had no special qualifications in pulmonary disease and did not typically treat patients with pneumoconiosis. Decision and Order on Remand at 3. The administrative law judge stated:

It is clear from the deposition that Dr. Delgalvis was not rendering an opinion as to the effect that the Miner's pneumoconiosis had on his unfortunate death, but was rather adopting the opinions of consultants who had performed tests on the Miner. Dr. Delgalvis, when asked her opinion as to what role the Miner's pulmonary condition played in his death, stating 'My opinion is that I have, I have consulted those physicians because they have expertise in that area and I respect their opinions and therefore that is also my opinion.'

Decision and Order on Remand at 3-4; Director's Exhibit 23 at 25. Further, the administrative law judge properly found Dr. Delgalvis's opinion outweighed by Dr. Galgon's opinion because Dr. Galgon's opinion was substantially supported by the opinions of Drs. Fino and Spagnolo, hospital records, the death certificate, and the objective evidence of record and because Dr. Galgon had superior qualifications in pulmonary disease. Decision and Order on Remand at 3-4.<sup>3</sup> Contrary to claimant's contention, the administrative law

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<sup>3</sup> The death certificate lists the immediate cause of death as pneumonia due to respiratory insufficiency due to left pleural effusion of questionable etiology. Director's Exhibit 3. Dr. Delgalvis, board-certified in internal medicine and hematology, found that lung disease contributed to death. Director's Exhibits 5, 8; Claimant's Exhibit 3. Dr. Galgon, board-certified in internal medicine and pulmonary medicine, opined that pneumoconiosis did not cause or contribute to the miner's death. Director's Exhibits 5, 20; Employer's Exhibit 3. Dr. Spagnolo found that the principal cause of death was progressive cancer superimposed upon the earlier chronic leukemia and that death was unrelated to pneumoconiosis. Director's Exhibit 9. Dr. Fino opined that death was due to obesity related pulmonary complications along with heart disease and that pneumoconiosis did not cause or contribute to death. Employer's Exhibit 2.

judge is not required to accord a treating physician's opinion greater weight when he finds it not well-reasoned or documented, *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994), nor is the administrative law judge required to accord less weight to the opinion of a non-examining physician. *Evosovich v. Consolidation Coal Co.*, 789 F.2d 1021, 9 BLR 2-10 (3d Cir. 1986); see *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998). Thus, the administrative law judge's accordance of little weight to Dr. Delgalvis's opinion in the instant case was rational. *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291, 1-1294 (1984); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, see *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See *Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Accordingly, since the administrative law judge rationally concluded that the evidence of record was insufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner's death, we must affirm the administrative law judge's denial of benefits in this survivor's claim as it is supported by substantial evidence and is in accordance with law. See *Lukosevicz, supra*; *Trumbo, supra*; see also *Director, OWCP v. Greenwich Collieries*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP [Ondecko]*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge