

BRB No. 01-0899 BLA

HELEN MARTIN (Widow of)	
CLETIS MARTIN))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
FREEMAN UNITED COAL 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 of John C. Holmes, Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

John A. Washburn (Gould & Ratner), Chicago, Illinois, for employer.

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

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order (2000-BLA-0541) of Administrative Law Judge John C. Holmes 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 The administrative law judge credited

¹The 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 miner with a total of between eighteen and one-half and nineteen years of coal mine employment, but found the weight of the evidence insufficient to establish either the existence of pneumoconiosis or death due to pneumoconiosis. Accordingly, benefits were denied. On appeal, claimant challenges the administrative law judge's findings under 20 C.F.R. §§718.202(a)(1), (2), (4) and 718.205(c). In response, employer asserts that the administrative law judge's Decision and Order denying benefits is supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has declined to 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 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 survivor's benefits under 20 C.F.R. Part 718, in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; *see 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). 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); *see also Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992).²

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the relevant evidence of record, we conclude that substantial evidence supports the administrative law judge's finding that the weight of the evidence

the amended regulations.

²This case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit, inasmuch as the miner's coal mine employment occurred in the State of Illinois. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

established that the miner's death was unrelated to any occupationally-acquired respiratory or pulmonary impairment, but was caused solely by metastatic squamous cell lung carcinoma due to smoking. Initially, we reject claimant's contention that the administrative law judge, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), did not weigh all the relevant evidence or provide adequate findings and conclusions in determining that pneumoconiosis did not hasten the miner's death. The administrative law judge fully discussed the relevant evidence of record and his reasoning is readily ascertainable from his discussion of the evidence. Decision and Order at 2-7. Claimant's argument that the opinions of Dr. Cohen, a pulmonary specialist, and Dr. Ewell, the miner's treating physician, were entitled to more weight than the "sole contrary opinion of Dr. Fino," Claimant's Brief at 13, merely seeks a reweighing of the medical opinion evidence, which the Board is not empowered to do. See *O'Keeffe, supra*; *Consolidation Coal Co. v. Sisson*, 54 F.3d 434, 19 BLR 2-155 (7th Cir. 1995); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

In evaluating the conflicting evidence relevant to the cause of the miner's death, the administrative law judge initially found that the credible expert medical opinions established that the miner's cancer was not caused by exposure to coal dust, and that the record contained no evidence linking the miner's heart condition to his pulmonary problems and death.³ The

³Claimant argues on appeal that since claimant did not assert that coal dust caused the miner's cancer and "no physician in this claim discussed a heart condition," the administrative law judge improperly and unnecessarily focused on these issues rather than limiting his analysis to the proper inquiry of whether pneumoconiosis was a contributing cause of the miner's death. Claimant's Brief at 13-15. Contrary to claimant's arguments, however, the administrative law judge's analysis focused on the bases for the various

administrative law judge then addressed Dr. Ewell's sole remaining basis for concluding that pneumoconiosis hastened the miner's death, *i.e.*, that the miner "could have withstood more intense radiation and chemotherapy had his pulmonary function been better." Decision and Order at 6; Claimant's Exhibit 4. The administrative law judge determined that Dr. Cohen similarly opined that the miner's severely impaired lung function, caused in part by coal dust exposure, "complicated his treatment for lung cancer thereby hastening his death. . . ." Decision and Order at 4; Claimant's Exhibit 5.

The administrative law judge acknowledged Dr. Ewell's status as the miner's treating physician, but found that he was not an expert in any area of medicine. Decision and Order at 6; *see Amax Coal Co. v. Franklin*, 957 F.2d 355, 16 BLR 2-50 (7th Cir. 1992). The administrative law judge further determined that the opinion of Dr. Ewell, as supported by the opinion of Dr. Cohen, was contradicted by the opinions of Board-certified oncologist Dr. Lad and Board-certified pulmonologists Drs. Fino and Kelly, stating that the radiation and chemotherapy treatments were purely palliative and would not have prolonged the miner's life. Decision and Order at 6.

Dr. Lad opined that the duration of the miner's life after the lung cancer diagnosis was "typical," explaining that "metastatic squamous cell lung cancer is essentially untreatable in that it is invariably rapidly fatal regardless of what types of treatments are used;" that the "intensity of treatment has nothing to do with outcome;" and that the miner's "radiation therapy, which was palliative in intent, was halted because of deteriorating performance status (the patient was dying) and not because of poor pulmonary function per se." Employer's Exhibit 1; Decision and Order at 4, 6. Dr. Fino also opined that coal dust

physicians' conclusions that pneumoconiosis either hastened or was unrelated to the miner's death. Decision and Order at 3-6. Claimant's argument that the administrative law judge misinterpreted Dr. Ewell's opinion, Claimant's Brief at 13-14, is without support in the record; further, the administrative law judge provided valid reasons for discounting Dr. Ewell's statement that "[t]here has also been some evidence that pneumoconiosis can contribute to the development of carcinoma of the lung," Claimant's Exhibit 4, *i.e.*, the opinion was speculative, not specific to this case nor to the type of cancer the miner suffered from, and Dr. Ewell had no expertise in this area of medicine. Decision and Order at 5.

exposure did not affect the intensity of radiation and/or chemotherapy the miner could have withstood; that it is unlikely more treatment would have made a difference in the miner's survival; that the clinical course was typical of individuals with smoking induced lung cancer; that the miner died of cancer; and that coal mine dust inhalation did not cause, contribute to or hasten the miner's death. Employer's Exhibit 3; Decision and Order at 4, 6. Dr. Kelly similarly concluded that any pulmonary impairment "resulting from any condition other than that related to his cancer would not have limited the possibility of further treatment," and that it was not likely that additional chemotherapy or radiation treatments would have prolonged the miner's life; further, Dr. Kelly noted that the miner suffered a complete collapse of the left lung secondary to tumor obstructing the left bronchus during his final hospitalization, and stated that "[i]f a lung is completely collapsed it contributes nothing to someone's ventilatory function, and the prior functional ability of that lung is irrelevant." Employer's Exhibit 2; Decision and Order at 5-6.

The administrative law judge permissibly accorded greatest weight to the opinion of Dr. Lad, as supported by the opinions of Drs. Fino and Kelly, as he found that Dr. Lad was an expert oncologist and was "specific, reasonable and comprehensive in explaining explicitly the stages of [the miner's] cancer, the medical evidence and its meaning with respect to this patient and the cause of death." Decision and Order at 6; *see Clark v. Karsts-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge then acted within his discretion as trier-of-fact in finding that a preponderance of the credible medical evidence established that the miner's death was not hastened by an occupationally acquired pulmonary condition. Decision and Order at 6; *see Railey, supra*; *Franklin, 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); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic, supra*; *Hall v. Director, OWCP*, 8 BLR 1-193 (1985). The administrative law judge's findings pursuant to Section 718.205(c) are supported by substantial evidence, and thus are affirmed.

Inasmuch as claimant has failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), an award of benefits is precluded under 20 C.F.R. Part 718, and we need not reach claimant's arguments regarding the existence of pneumoconiosis under Section 718.202(a). *Anderson, supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge