BRB No. 03-0120 BLA

HELEN M. SAFKO (Widow of JOHN SAFKO) Claimant-Petitioner v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Respondent	))))))))))))	DATE ISSUED: 09/30/2003 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Rocco V. Valvano, Jr. (Mazzoni & Karam), Scranton, Pennsylvania, for claimant.

Sarah M. Hurley (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order Denying Benefits (01-BLA-0289) of Administrative Law Judge Robert D. Kaplan 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

---

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became

judge found that the parties stipulated to the following: eight years of coal mine employment; the existence of pneumoconiosis; and that pneumoconiosis arose out of coal mine employment. The administrative law judge found, however, that the evidence was insufficient to establish death due to pneumoconiosis. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the medical opinions of Drs. Conaboy, Tracy and Levinson did not establish that pneumoconiosis contributed to the miner's death. Claimant also contends that lay testimony supports entitlement. In response, the Director, Office of Workers' Compensation Programs, (the Director) contends that the administrative law judge properly accorded little weight to the opinions of Drs. Conaboy and Tracy, but contends that the administrative law judge erred in his consideration of the opinions of Drs. Sherman and Levinson. The Director also contends that the administrative law judge must consider and specifically set forth the weight he attributed to the lay testimony of record. Accordingly, the Director argues that the administrative law judge's Decision and Order denying benefits should be vacated and the case remanded for reconsideration of the opinions of Drs. Sherman and Levinson, and consideration of the lay testimony of record.

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)-(4). 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, 1006, 13 BLR 2-100, 2-108 (3d Cir. 1989).

---

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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Claimant first contends that the administrative law judge erred in discounting the opinions of Drs. Conaboy and Tracy because they did not consistently mention the existence of pneumoconiosis in all their reports. Claimant points out that it was reasonable for Drs. Conaboy and Tracy to fail to mention the existence of pneumoconiosis in the reports they wrote pursuant to the miner's hospitalization immediately prior to death since the primary focus of their involvement with the miner at that time was his cardiac problem, which was the primary cause of his death. Thus, claimant contends that it was unreasonable for the administrative law judge to reject their opinions because the reports they wrote at the time of the miner's death did not mention the existence of pneumoconiosis as their earlier reports had. In response, however, the Director contends that it is still the doctor who must supply the necessary explanation in order to provide a "reasoned medical opinion," and the administrative law judge may not substitute his own opinion for those of the medical experts. Further, the Director contends that while Drs. Conaboy and Tracy did not mention the existence of pneumoconiosis in their reports of claimant's final hospitalization, they did note the presence of hypoxia and other respiratory symptoms. The Director contends, therefore, that the administrative law judge properly discounted the opinions of Drs. Conaboy and Tracy because they did not provide the required linkage between pneumoconiosis and death.

Additionally, claimant contends that the administrative law judge erred in discounting Dr. Tracy's opinion as being too general and not sufficiently focusing on the miner's condition, since Dr. Tracy did, in fact, provide specific explanation and foundation for his opinion. The Director contends, however, that the administrative law judge properly rejected Dr. Tracy's opinion because it was merely a general statement unsupported by any specific reference to the miner's situation.

In considering the medical opinions relevant to the cause of the miner's death, the administrative law judge accorded little weight to the statements made by Dr. Conaboy in his letter dated July 6, 2000, in which he opined that the miner's pneumoconiosis was an "absolute contributing factor to his illness and his death," and on the death certificate where the doctor listed the cause of the miner's death as acute myocardial infarction due to anthracosilicosis; the administrative law judge reasonably found that the documents did not contain any reasoning supporting their conclusions. Moreover, the administrative law judge noted that the report prepared by Dr. Conaboy during claimant's last hospitalization did not refer to the existence of pneumoconiosis, although it referred to claimant's hypoxia. Further, the administrative law judge noted that, in his report of February 15, 2000, in which he reviewed the miner's last hospitalization three weeks after the miner's death, Dr. Conaboy again failed to refer to the existence of pneumoconiosis. Thus, the administrative law judge concluded that, with the exception of the death certificate and the letter of July 6, 2000, Dr. Conaboy made no other

reference to the existence of pneumoconiosis in his various reports, and provided no basis for the conclusion, contained in the death certificate and his July 6, 2000 letter, that pneumoconiosis contributed to the miner's death. This was rational. 20 C.F.R. §718.205(c); *Lukosevicz,* 888 F.2d 1001, 13 BLR 2-100; *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 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); *Willis v. Birchfield Mining Co.*, 15 BLR 1-59 (1991); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-297 (1984); *see also Risher v. Director, OWCP*, 940 F.2d 327, 15 BLR 2-186 (8th Cir. 1991)(a fact-finder "may disregard a medical opinion that does not adequately explain the basis for its conclusion").

Likewise, the administrative law judge also accorded diminished weight to the opinion of Dr. Tracy because Dr. Tracy did not mention the existence of pneumoconiosis in the report he wrote at the time of the miner's last hospitalization,[2] although in a seven line letter dated July 21, 2000, after the miner's death, he opined that there was a "direct" connection between the miner's pneumoconiosis and the severe heart disease which caused his death. Further, the administrative law judge noted that, while Dr. Tracy referred broadly to a concept that pneumoconiosis could have contributed to a miner's death who has both pneumoconiosis and heart disease, Dr. Tracy failed to particularize how the miner's pneumoconiosis contributed to his death from heart disease. This was rational. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *see Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-263 (4th Cir. 2000).

Further, contrary to claimant's contentions, the administrative law judge was not required to accord greater weight to the opinion of Dr. Conaboy, because he was claimant's treating physician, or to the opinion of Dr. Tracy, because he was claimant's treating cardiologist, as he found their opinions lacking in adequate reasoning. *See* 20 C.F.R. §718.104(d)(5); *Balsavage v. Director, OWCP*, 295 F.3d 390, 22 BLR 2-386 (3d Cir. 2002); *Lango v. Director, OWCP*, 104 F.3d 573, 22 BLR 2-12 (3d Cir. 1997); *Milburn Colliery Coal Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1988); *Tedesco v. Director, OWCP*, 18 BLR 1-103, 1-105 (1994); *Clark*, *supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985).

Claimant next contends that the administrative law judge erred in dismissing Dr. Levinson's opinion that the miner's death was due to myocardial infarction but that pneumoconiosis substantially aggravated and hastened death as unreasoned. Claimant contends that, contrary to the administrative law judge's finding, Dr. Levinson's opinion

---

[2] Dr. Tracy's final diagnoses included: acute pulmonary edema, cardiogenic shock, congestive heart failure, acute renal failure, atrial fibrillation, multi-nodular cardiac disease secondary to rheumatic fever, history of hyperthyroidism, multinodular goiter, and hypertension. Director's Exhibit 4.

was based on a consideration of the whole medical record. The Director contends, however, that Dr. Levinson's opinion is unexplained and insufficiently reasoned and, as such, is entitled to "no weight" rather than the "dimished weight" accorded by the administrative law judge. Specifically, the Director contends: the administrative law judge did not explain that there was evidence that the miner's heart condition had worsened by the time of his death; Dr. Levinson did not describe the role, if any, that pneumoconiosis played in the development and/or worsening of the miner's fatal heart disease; and Dr. Levinson never credibly linked hypoxemia, as evidenced by claimant's January 19, 2000 blood gas study, to the miner's death since the miner's blood gas study results improved during the course of his last hospitalization.

In considering Dr. Levinson's opinion, the administrative law judge found it problematic because Dr. Levinson failed to provide a basis for his bald conclusion that the miner's hypoxemia was at least partially caused by pneumoconiosis rather than wholly caused by the miner's coronary condition. The administrative law judge also noted that Dr. Levinson failed to explain why reductions on blood gas studies of 40 to 45% constituted only mild to moderate reductions in terms of claimant's cardiac abnormalities. Decision and Order at 5. Thus, the administrative law judge accorded Dr. Levinson's opinion "diminished" weight because Dr. Levinson failed to explain how pneumoconiosis contributed to the miner's death.

We agree with the Director that the administrative law judge rationally found that Dr. Levinson's opinion was unexplained and insufficiently reasoned. The administrative law judge, therefore permissibly accorded it little weight. *See Balsavage*, 295 F.3d 390, 22 BLR 2-386; *Lango*, 104 F.3d 573, 21 BLR 2-12; *Clark*, 12 BLR 1-149; *Brown v. Director, OWCP*, 7 BLR 1-730 (1984); *see also U.S. Steel Co. Inc. v. Director, OWCP* [*Jarrell*] 187 F.3d 384, 21 BLR 2-369 (1999). Since we affirm the administrative law judge's finding that Dr. Levinson's opinion was problematic and entitled to little weight, we need not address the argument of the Director that the opinion was entitled to "no weight" as opposed to "diminished weight." Read in context, it is clear that the administrative law judge determined that the opinion did not constitute substantial evidence which would support a finding that the miner's death was due to pneumoconiosis. *See Scott v. Mason Coal Co.*, 289 F.3d 263, 270, 22 BLR 2-372, 2-3-84 (4th Cir. 2002)(opinions that may hold no weight, or at most may hold…little weight…cannot suffice as substantial evidence).

Accordingly, because the administrative law judge properly rejected the opinions of Drs. Conaboy and Tracy and found Dr. Levinson's opinion to be problematic, the only opinions which support claimant's entitlement, the administrative law judge's finding that the evidence failed to establish death due to pneumoconiosis must be affirmed, and we need not address the argument by claimant and the Director concerning Dr. Sherman's opinion or the lay testimony, since Dr. Sherman found that pneumoconiosis did not contribute to the miner's death and lay testimony cannot show that

pneumoconiosis contributed to death without the support of medical evidence. *See Fields*, 10 BLR at 1-22 (1989); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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