

BRB No. 12-0249 BLA

AMBER F. WALSH)	
(Widow of RONALD G. WALSH))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BUFFALO MINING COMPANY)	
)	DATE ISSUED: 12/13/2012
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 on Remand Denying Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Amber F. Walsh, Logan, West Virginia, *pro se*.

George E. Roeder, III (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Rita Roppolo (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals, without the assistance of counsel, the Decision and Order on Remand Denying Benefits (2004-BLA-6583) of Administrative Law Judge Linda S. Chapman rendered on a survivor's claim filed pursuant to the provisions of Title IV of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). This case is before the Board for a fourth time.² In the Board's most recent decision, the Board held that Administrative Law Judge Daniel F. Solomon erred in crediting the opinion of Dr. Racadag, and in discrediting the opinions of Drs. Naeye, Bush, Hippensteel, and Rosenberg, to conclude that claimant established that the miner's death was due to pneumoconiosis. *Walsh v. Buffalo Mining Co.*, BRB No. 10-0310 BLA, slip op. at 4-10 (Jan. 27, 2011)(unpub.). The Board, therefore, vacated Judge Solomon's award of benefits, and remanded the case for reassignment to another administrative law judge. *Id.* at 10.

On remand, the case was assigned to Administrative Law Judge Linda S. Chapman (the administrative law judge), who found that the evidence failed to establish that pneumoconiosis contributed to the miner's death, pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the denial of benefits in her survivor's claim. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, filed a limited response, correctly noting that Section 1556 of Public Law No. 111-148, which amended

¹ Claimant is the widow of the deceased miner, who died on June 20, 2003. Director's Exhibit 16. Claimant filed her survivor's claim on July 8, 2003. Director's Exhibit 4.

² The complete procedural history in this case is contained in the Board's prior decisions. In brief, in the Board's initial decision, the Board affirmed Administrative Law Judge Daniel F. Solomon's findings that the miner worked thirty-seven years in coal mine employment and suffered from pneumoconiosis arising out of his coal mine employment. *Walsh v. Buffalo Mining Co.*, BRB No. 06-0808 BLA, slip op. at 5 n.4 (July 20, 2007)(unpub.). However, the Board vacated the award of benefits, in its first, second, and third decisions, on the ground that Judge Solomon erred in his consideration of the evidence relevant to the cause of the miner's death at 20 C.F.R. §718.205(c). *Id.* at 7-8; *A.F.W. [Walsh] v. Buffalo Mining Co.*, BRB No. 08-0325 BLA, slip op. at 12 (Jan. 27, 2009)(unpub.); *Walsh v. Buffalo Mining Co.*, BRB No. 10-0310 BLA, slip op. at 4-10 (Jan. 27, 2011)(unpub.).

the Act with respect to the entitlement criteria for certain claims, does not apply to the instant claim as it was filed prior to January 1, 2005.³

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on survivors' claims when the miner's death is due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's 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 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). 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); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

In this case, six physicians, Drs. Racadag, Stoll, Naeye, Bush, Rosenberg, and Hippensteel, addressed the cause of the miner's death. Each of these physicians

³ Section 1556 of Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified at 30 U.S.C. §921(c)(4) and 932(l)), reinstated, in pertinent part, the "15-year presumption" of death due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), for claims filed after January 1, 2005, that were pending on or after March 23, 2010. We agree with the Director, Office of Workers' Compensation Programs, and hold that the recent amendments to the Black Lung Benefits Act do not apply to this case, as the claim was filed on July 8, 2003.

⁴ The record reflects that the miner's coal mine employment was in Virginia. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(en banc).

attributed the miner's death to lung cancer.⁵ Although five of the six physicians, Drs. Racadag, Naeye, Bush, Rosenberg, and Hippensteel, diagnosed coal workers' pneumoconiosis, they disagreed as to the role, if any, that the disease played in the miner's death.⁶ Dr. Racadag, the autopsy prosector, opined that "pneumoconiosis contributed as [a] hastening role in miner's death because it made his breathing difficult." Director's Exhibit 19. However, Drs. Naeye, Bush, Rosenberg, and Hippensteel each opined that the miner's pneumoconiosis was too mild to have played any role in his death. Director's Exhibit 20; Employer's Exhibits 1-5.

In considering the medical opinion evidence pursuant to 20 C.F.R. §718.205(c), the administrative law judge permissibly found Dr. Racadag's opinion to be conclusory, and insufficiently reasoned, because the physician neither explained how the miner's pneumoconiosis impaired his breathing, nor identified any objective medical evidence to support his opinion that coal worker's pneumoconiosis resulted in any process or mechanism that contributed to the miner's death. *See Sparks*, 213 F.3d at 192, 22 BLR at 2-263; *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-174 (4th Cir. 2000); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-31 (4th Cir. 1997); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997); *Hutchens v. Director, OWCP*, 8 BLR 1- 16 (1985); Decision and Order on Remand at 11-12; Director's Exhibits 18, 19.

In contrast, the administrative law judge found that Drs. Naeye and Bush, who reviewed the autopsy slides, and Drs. Rosenberg and Hippensteel, who reviewed the miner's records, persuasively explained why the miner's minimal coal workers' pneumoconiosis could not have had any effect on the miner's ability to breath during his lifetime, and was too mild to have impacted his death in any way. Decision and Order on Remand at 12. Thus, the administrative law judge acted within her discretion in

⁵ Drs. Stoll, Naeye, Bush, Rosenberg, and Hippensteel explicitly opined that the miner's death was due to lung cancer. Dr. Racadag performed the miner's autopsy. In his autopsy report, Dr. Racadag listed six pathological diagnoses, including coal workers' pneumoconiosis and squamous cell carcinoma, and indicated that these "conditions probably contributed to the [miner's] suffering and demise." Director's Exhibit 18.

⁶ Dr. Stoll, the miner's treating physician, completed the miner's death certificate, attributing his death to metastatic lung cancer. Director's Exhibit 16. In the section requesting a listing of "[o]ther significant conditions contributing to death but not resulting in the immediate cause," Dr. Stoll listed chronic obstructive pulmonary disease and atrial fibrillation. *Id.* Dr. Stoll did diagnose coal workers' pneumoconiosis, and did not relate the chronic obstructive pulmonary disease to coal mine dust exposure. Director's Exhibits 16, 22.

concluding that their opinions were better reasoned and documented, and more consistent with the credible objective evidence of record, than the opinion of Dr. Racadag. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Akers*, 131 F.3d at 440-441, 21 BLR at 2-274; *Lane v. Union Carbide Corp.*, 105 F.3d 166, 174, 21 BLR 2-34, 2-48 (4th Cir. 1997); Decision and Order on Remand at 12; Director’s Exhibit 20; Employer’s Exhibits 1-5. The administrative law judge further found that while Dr. Racadag’s credentials are not in the record, Drs. Naeye, Bush, Hippensteel, and Rosenberg have “excellent” professional credentials.⁷ Decision and Order on Remand at 12.

As the administrative law judge correctly analyzed the medical evidence and explained her reasons for discrediting the opinion of Dr. Racadag, and crediting the opinions of Naeye, Bush, Hippensteel, and Rosenberg, we affirm the administrative law judge’s finding that Dr. Racadag’s opinion, standing alone, is not sufficient to meet claimant’s burden to establish that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁸ *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 440-441, 21 BLR at 2-274; Decision and Order on Remand at 11-12.

⁷ Drs. Naeye and Bush are Board-certified pathologists and Drs. Hippensteel and Rosenberg are Board-certified pulmonary specialists. Director’s Exhibit 20; Employer’s Exhibits 1, 3, 5.

⁸ The administrative law judge specifically found that even if she were to discount the opinions of Drs. Naeye, Bush, Hippensteel, and Rosenberg, the opinion of Dr. Racadag would not be sufficient to carry claimant’s burden of proof. Decision and Order on Remand at 12.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge