

BRB No. 06-0471 BLA

EVA SMOLOCK, o/b/o and Survivor)
of NICHOLAS SMOLOCK)
)
Claimant-Petitioner)
)
v.)
)
DIRECTOR, OFFICE OF WORKERS') DATE ISSUED: 01/23/2007
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent) DECISION and ORDER

Appeal of the Decision and Order On Remand of Janice K. Bullard,
Administrative Law Judge, United States Department of Labor.

Eva Smolock, Frackville, Pennsylvania, *pro se*.

Sarah M. Hurley (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for 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 (03-BLA-0077 and 03-BLA-5235) of Administrative Law Judge Janice K. Bullard denying benefits on a miner's and 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).² In her previous decision, the administrative

¹ Claimant is the surviving spouse of the miner who died on June 15, 2001. Director's Exhibit 205.

² The miner's claim was filed January 27, 1989. Director's Exhibit 1. Claimant filed her survivor's claim on August 24, 2001.

law judge, noting that the miner had established the existence of coal worker's pneumoconiosis pursuant to 20 C.F.R. §§718.202(a), 718.203, found that while the evidence of record was sufficient to establish a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b), which established a basis for modification of the denial of the miner's claim, 20 C.F.R. §725.310 (2000), it failed to establish that the miner's total disability was due to pneumoconiosis at 20 C.F.R. §718.204(c). Regarding the survivor's claim, the administrative law judge found the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied on both the miner's and the survivor's claims.³

Pursuant to an appeal by claimant, the Board affirmed the administrative law judge's findings at Section 718.204(b) and Section 725.310 (2000) as unchallenged on appeal, but vacated the administrative law judge's denial of the miner's and the survivor's claims and remanded the case for the administrative law judge to weigh the medical reports of record relevant to Sections 718.204(c) and 718.205(c). On remand, finding the evidence insufficient to establish disability causation at Section 718.204(c) or death due to pneumoconiosis at Section 718.205(c), the administrative law judge again denied benefits on both the miner's and the survivor's claims.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, (the Director) responds, urging affirmance of the administrative law judge's decision as supported by substantial evidence.

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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 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).

After careful consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's Decision and

³ The procedural history of these claims is set forth in *Smolock v. Director, OWCP*, BRB No. 04-0670 BLA (May 13, 2005)(unpub.).

Order is rational, supported by substantial evidence, and in accord with law. It is, accordingly, affirmed.

In considering the medical reports of record pursuant to Section 718.204(c), the administrative law judge permissibly found that the opinions of Drs. Ahluwalia and Rashid, Director's Exhibits 53, 68, 165, were worth little weight as these physicians did not diagnose the existence of pneumoconiosis or a totally disabling respiratory impairment, and Dr. Ahluwalia's reports were much older than the other evidence of record. Decision and Order on Remand at 3-4, 7, 9-11; *Workman v. Eastern Associated Coal Corp.*, 23 BLR 1-22 (2004)(Decision and Order on Recon.)(*en banc*); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986).

The administrative law judge also permissibly accorded less weight to Dr. Kruk's diagnosis of totally disabling coal worker's pneumoconiosis, Director's Exhibit 178, as the doctor's opinion, regarding the miner's smoking history, was not fully formed and did not offer a clear explanation for his disregard of its potential impact on the miner's respiratory condition. Decision and Order on Remand at 6, 9-11; *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Stark*, 9 BLR 1-36; *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985).

Regarding Dr. Matthew Kraynak's opinion of totally disabling coal worker's pneumoconiosis, Director's Exhibits 133, 156, 208, the administrative law judge permissibly accorded this opinion little weight as she found it not well-documented and conclusory as Dr. Matthew Kraynak, despite his treating relationship with the miner, did not address the miner's previous surgeries for cardiac, gastric and other conditions, and did not discuss the miner's smoking history or its impact on the miner's respiratory condition. Decision and Order on Remand at 6-7, 10-11; *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

Additionally, the administrative law judge permissibly gave little weight to the opinion of Dr. Raymond Kraynak, diagnosing totally disabling coal worker's pneumoconiosis. Director's Exhibit 199; Claimant's Exhibit 8. The administrative law judge properly found that the doctor's opinion was not well-reasoned because the doctor, despite his treatment relationship with the miner, failed to note any of the miner's other conditions, did not address the miner's smoking history as a potential cause of disability and failed to reconcile his conclusion that the miner had no cardiac abnormality with findings of ischemia on the miner's 2002 electrocardiogram. Decision and Order on Remand at 4-6, 9-11; *Lango*, 104 F.3d 573, 21 BLR 2-12; *Clark*, 12 BLR 1-155; *Tackett*, 12 BLR 1-11.

The administrative law judge was not required to accord greater weight to the opinions of Drs. Matthew and Raymond Kraynak due to their status as the miner's treating physicians as the administrative law judge permissibly found these opinions to be unreasoned, and found that Dr. Raymond Kraynak lacked any specialized qualifications in the field of pulmonary medicine. *Schaaf v. Matthews*, 574 F.2d 157 (3d Cir. 1978); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Clark*, 12 BLR 1-155 (1988). Accordingly, we affirm the administrative law judge's finding at Section 718.204(c) and, since claimant has failed to establish a requisite element of entitlement, we affirm the denial of benefits in the miner's claim. See *Bonessa v. United States Steel Corp.*, 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Regarding the administrative law judge's consideration of the survivor's claim, the administrative law judge permissibly rejected the miner's death certificate, even though it listed pneumoconiosis as one of the significant causes of death, as the credentials of the physician signing the certificate were not in the record. Director's Exhibit 205; Decision and Order on Remand at 8, 12; *Lango*, 104 F.3d 573, 21 BLR 2-12; *Addison v. Director, OWCP*, 11 BLR 1-68 (1988).

The administrative law judge rationally gave little weight to the opinion of Dr. Matthew Kraynak, as he found it to be conclusory, and not well-documented. Director's Exhibits 133, 156, 208; Claimant's Exhibit 1. Similarly, the administrative law judge rejected the opinion of Dr. Raymond Kraynak, because she found that the doctor did not reconcile his opinion with the evidence of the miner's cardiac problems and the doctor merely repeated information on the death certificate, which the administrative law judge had rejected. Decision and Order on Remand at 4-7, 9-12; *Lango*, 104 F.3d 573, 21 BLR 2-12; *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Clark*, 12 BLR 1-155; *Fields*, 10 BLR 1-19.

Moreover, the administrative law judge permissibly accorded little weight to the opinions of Drs. Matthew and Raymond Kraynak, based on their status as the miner's treating physicians, since the administrative law judge determined that their opinions were not well-reasoned. Decision and Order on Remand at 4-7, 9-11; 20 C.F.R. §718.104(d)(5); *Schaaf*, 574 F.2d 157; *Tedesco*, 18 BLR 1-103; *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989).

Instead, the administrative law judge permissibly credited the opinion of Dr. Sherman, that pneumoconiosis played no part in the miner's death due to a stroke, as he found it better explained than the other reports of record and because Dr. Sherman had superior qualifications in the field of pulmonary medicine. Director's Exhibit 210; Decision and Order on Remand at 7-8, 13; *Lango*, 104 F.3d 573, 21 BLR 2-12; *Clark*, 12 BLR 1-155; *DeFore v. Alabama By-Products Corp.*, 12 BLR 1-27 (1988); *Dillon v.*

Peabody Coal Co., 11 BLR 1-113 (1988). The administrative law judge's finding that claimant failed to establish that pneumoconiosis contributed to the miner's death at Section 718.205(c) and the administrative law judge's denial of benefits on the survivor's claim are, therefore, affirmed. *See Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

Accordingly, the administrative law judge's Decision and Order On Remand denying benefits on both the miner's and the survivor's claims is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge