BRB No. 01-0314 BLA

ANNA D. WILLIAMS (Widow of JOHN G. WILLIAMS)	)	
Claimant-Petitioner	)	
v.	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:
Respondent	)	DECISION and ORDER

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

Michelle A. Jones (Krasno, Krasno & Quinn), Pottsville, Pennsylvania, for claimant.

Timothy S. Williams (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, the widow of the miner, appeals the Decision and Order Denying Benefits (00-BLA-00481) 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

[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 effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-

administrative law judge found that the parties stipulated to thirteen years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 3. The administrative law judge further found that the evidence did not establish the existence of pneumoconiosis arising out of coal mine employment and death due to pneumoconiosis pursuant to Sections 718.202(a), 718.203(b) and 718.205(c)(2000). Accordingly, benefits were denied.

On appeal, claimant contends that the evidence of record is sufficient to establish the existence of pneumoconiosis arising out of coal mine employment and that pneumoconiosis was a substantially contributing factor in the miner's death. In

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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.

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). 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*, 160 F. Supp. 2d 47 (D.D.C. 2001).

response, the Director, Office of Workers' Compensation Programs, states that while he does not concede the presence of coal mine-related pneumoconiosis, he urges affirmance of the denial of benefits because claimant has failed to meet her burden of establishing death due to pneumoconiosis, an essential element of entitlement in a survivor's claim.

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

Claimant first contends that the evidence of record is sufficient to establish the existence of pneumoconiosis based on the positive reading by Dr. Imperiale of the most recent x-ray of record. We disagree. Ten out of the thirteen x-ray readings of record were negative for the existence of pneumoconiosis, four of these ten were read by physicians with dual qualifications. The administrative law judge found the x-ray evidence of record insufficient to establish the existence of pneumoconiosis based on the preponderance of negative x-ray readings by the physicians with superior qualifications. This was rational. Decision and Order at 5; Director's Exhibits 10-13, 18-9-12; 20 C.F.R. §718.202(a)(1); *see Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *Sheckler v. Clinchfield Coal*

Co., 7 BLR 1-128 (1984). Further, even if the administrative law judge, as urged by claimant, excluded the readings of x-rays taken from July 6, 1982 to April 23, 1984, as too remote in time to be relevant, the administrative law judge's finding that the x-rays were insufficient to establish the existence of pneumoconiosis is still rational because the weight of the readings of x-rays taken after April 1984, read by dually qualified physicians, is negative.[2] *Staton*, *supra*; *Woodward*, *supra*; *Melnick*, *supra*; *Dixon*, *supra*; *Roberts*, *supra*; *Sheckler*, *supra*. Moreover, even though claimant contends that the x-ray dated September 21, 1995, was read as positive by Dr. Imperiale, whose credentials were not in the record, it was also read as negative by Dr. Barrett, a dually qualified Board-certified, B-reader. Decision and Order at 5; Director's Exhibits 18-11, 12. Nor, contrary to claimant's contention, was the September 21, 1995 x-ray the most recent x-ray of record. More recent x-rays were taken February 12, 1997 and May 10, 1999, resulting in negative readings. Director's Exhibits 11, 12, 13. Accordingly, we affirm the administrative law judge's finding that the x-ray evidence failed to establish the existence of pneumoconiosis.

[2] The post April, 1984 x-ray evidence includes nine readings of six x-rays, two positive readings by physicians whose credentials are not in the record, and seven negative readings, four by dually qualified physicians.

Claimant next contends that the opinions of Drs. Aquilina, Karvalage, Farr, Evans, Steele, Maroun, Gouw, Conrad, and the death certificate completed by Dr. Persin are sufficient to establish the existence of pneumoconiosis. The administrative law judge permissibly discredited Dr. Aquilina's diagnosis of coal workers' pneumoconiosis, however, because Dr. Aquilina depended exclusively on Dr. Imperiale's positive x-ray reading, stating that, "if as per reread of B-reader chest X-ray is in fact negative for coal workers[']pneumoconiosis, my diagnosis would then be chronic obstructive pulmonary disease (emphysema) causally related to tobacco and the aging process." Decision and Order at 8; *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1988). Further, the administrative law judge permissibly accorded diminished weight to Dr. Karlavage's findings of anthracosilicosis and pneumoconiosis because he relied on subsequently invalidated MVV values and non-qualifying FEV_1 and FVC values and because his findings were disputed by Dr. Cander, who had reviewed a more complete medical history of the miner in 2000 than was available to Dr. Karlavage in 1985. *See Stark v. Director, OWCP*, 9 BLR 1-36, 37 (1986); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Morgan v. Bethlehem Steel Corp.*, 7 BLR 1-226 (1984); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145, 147 n.2 (1984); *Winters v. Director, OWCP*, 6 BLR 1-877, 881 n.4 (1984). Additionally, contrary to claimant's argument, the fact that Dr. Cander did not personally examine claimant does not render his opinion, that claimant did not have pneumoconiosis, incompetent and unreliable, when the administrative law judge found it well-reasoned and supported by objective data. *See Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Evosovich v. Consolidation Coal Co.*, 189 F.2d 1021, 9 BLR 2-10 (3d Cir. 1986).

Further, we reject claimant's contention that the opinions of Drs. Farr, Evans, Steele, Maroun, Gouw and Conrad establish the existence of pneumoconiosis, because these opinions, along with various hospital records, did not diagnose the existence of pneumoconiosis as defined by the Act, 20 C.F.R. §718.201; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985) and the opinions of Drs. Maroun, Gouw and Conrad were merely x-ray reports, not medical opinions as defined at 20 C.F.R. §718.202(a)(4); *see Taylor*, *supra*. Moreover, in light of the administrative law judge's consideration of all the evidence relevant to the existence of pneumoconiosis and the fact that the death certificate does not discuss the basis for its diagnosis of silicosis, we reject claimant's argument that it is sufficient to establish the existence of pneumoconiosis. 20 C.F.R. §718.202(a)(4); *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997); *Risher v. Director, OWCP*, 940 F.2d 327, 15 BLR 2-186 (8th Cir. 1991); *Clark*, *supra*; *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); *Oggero*, *supra*. We therefore affirm the administrative law judge's finding that the medical opinion

evidence failed to establish the existence of pneumoconiosis.

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 failed to establish the existence of pneumoconiosis, an essential element of entitlement, we need not consider claimant's arguments concerning the cause of pneumoconiosis and claimant's and the Director's arguments concerning death due to pneumoconiosis. *Trumbo*, *supra*; *Trent v. Director, OWCP*, 11 BLR 1-26 (1988); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge