

BRB No. 00-1084 BLA

DOROTHY A. ZAJDEL)
(Widow of WILLIAM J. ZAJDEL))
)
Claimant-Petitioner)
)
v.)
)
BARNES & TUCKER 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 - Denying of Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose), Johnstown, Pennsylvania, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, the widow of the miner, appeals the Decision and Order - Denying Benefits (99-BLA-0984) of Administrative Law Judge Daniel L. Leland 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 found,

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, 107 (2000) to be codified at 20

and the employer stipulated to, thirty-six 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 2. The administrative law judge found the evidence of record insufficient to establish that the miner's death was due to pneumoconiosis. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in his weighing of the medical opinion evidence of record. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate in this appeal.²

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, claimant must establish that the miner

C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² On August 9, 2001, the United States District Court for the District of Columbia issued its decision in *National Mining Association v. Chao*, D.D.C., 00-3086 (Aug. 9, 2001), granting summary judgment defending final regulations issued on December 20, 2000, 65 Federal Register 79920-80107 under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. In its decision, the court also dissolved the Preliminary Injunction Order that it had issued on February 9, 2001. As a result of the court's decision, the issue raised by the Preliminary Injunction Order is now moot, and we will not address the briefs submitted by the parties in response to the Board's order of May 16, 2001.

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 2-101 (3d Cir. 1989).

Claimant contends that the administrative law judge erred in according greater weight to the opinions of Drs. Naeye, Kleinerman and Churg based on their superior expertise. Rather, claimant contends that the administrative law judge failed to evaluate sufficiently all the opinions of record and to consider the expertise of the other physicians who also had superior credentials.

Although, as claimant contends, Dr Perper was also a published pathologist, the administrative law judge permissibly accorded greater weight to the opinions of Drs. Naeye, Kleinerman and Churg, pathologists who found that pneumoconiosis did not contribute to death, not only because of their superior qualifications as published experts in the field of occupational lung disease but also because their opinions were supported by other medical evidence of record. This was proper. *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*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *see also Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

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 was insufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner's death, we must affirm the administrative law judge's denial of benefits in this survivor's claim as it is supported by substantial evidence and is in accordance with law. *See Lango, supra*; *Lukosevicz, supra*; *Trumbo, supra*; *see also Director, OWCP v. Greenwich Collieries*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v.*

Director, OWCP [Ondecko], 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); Trumbo, supra.

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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge