

BRB No. 04-0319 BLA

LINDA CHAPMAN	)	
(Widow of CARSON C. CHAPMAN)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CARBON FUEL COMPANY	)	DATE ISSUED: 12/28/2004
	)	
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 Benefits of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Linda Chapman, Spencer, West Virginia, *pro se*.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order - Denying Benefits (02-BLA-0137) of Administrative Law Judge Gerald M. Tierney rendered 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). The administrative law judge credited the miner with sixteen and one-quarter years of coal mine employment<sup>1</sup> and based on the date of filing, adjudicated the claim pursuant to

---

<sup>1</sup> The record indicates that the miner's coal mine employment occurred in West Virginia. Director's Exhibits 2-4. 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, 1-202 (1989)(*en banc*).

20 C.F.R. Part 718.<sup>2</sup> Decision and Order at 2. Employer conceded the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), respectively. Hearing Transcript at 11. The administrative law judge found, however, that the medical evidence was insufficient to establish that pneumoconiosis was a substantially contributing cause of death pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant generally contends that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.

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 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The Board 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 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 pursuant to 20 C.F.R. §718.205(c), 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); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert denied*, 506 U.S. 1050 (1993).

---

<sup>2</sup> The miner died on January 5, 2001. Director's Exhibit 9. Claimant filed her claim for survivor's benefits on January 18, 2001, which was denied by the district director on July 17, 2001. Director's Exhibits 1, 14. Claimant requested a hearing and the case was transferred to the Office of Administrative Law Judges on January 2, 2002. Director's Exhibits 16, 24.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The death certificate, completed by Dr. Ambrosio, listed acute renal failure as the immediate cause of death, with underlying causes of chronic renal failure and diabetic nephropathy. Chronic congestive heart failure, chronic obstructive pulmonary disease and chronic peripheral vascular insufficiency were listed as other significant conditions. Director's Exhibit 9. The autopsy, completed by Dr. Huang, noted moderately severe pulmonary congestion and edema, interstitial fibrosis, moderate anthracosis, emphysema, bronchitis and atherosclerotic cardiovascular disease, but did not list a cause of death. Director's Exhibit 11. In a report dated July 17, 2001, Dr. Ambrosio stated that while the autopsy proved the miner had "pneumoconiosis exposure," he could not quantify how much it contributed to the miner's demise. Director's Exhibit 13. Drs. Fino, Dahhan, Castle, Crisalli, Naeye, Bush, Crouch and Zaldivar all opined that pneumoconiosis did not contribute to the miner's death. Director's Exhibit 23; Employer's Exhibits 1-12. Only Dr. Green opined that pneumoconiosis contributed to the miner's death. Claimant's Exhibit 1.

In considering Dr. Green's conclusion that pneumoconiosis contributed to the miner's death, the administrative law judge noted that the physician reviewed only the autopsy report, Dr. Rasmussen's report of July 31, 1995 and a submission by the miner's wife, dated August 22, 2000, providing information on the miner's work, smoking and medical histories, and had not reviewed the death certificate, the contrary opinion of Dr. Zaldivar, the contrary opinion of the miner's treating physician, Dr. Ambrosio, or the contrary opinions of board certified pulmonary specialists Drs. Crisalli, Dahhan, Fino and Castle. The administrative law judge further noted that Dr. Green also did not consider the complications the miner suffered due to his diabetes and renal failure. The administrative law judge, therefore, rationally discredited Dr. Green's opinion as it was based on an incomplete review of the medical evidence of record. *Milburn Colliery Coal Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-33 (4th Cir. 1998) (administrative law judge is required to consider quality of physician's reasoning); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986) (medical opinion may be rejected if a physician does not have a complete picture of the miner's health); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985). The administrative law judge further found that, in contrast, Drs. Dahhan, Zaldivar, Crisalli, Castle and Fino all reviewed Dr. Green's report, all noted that his opinion was based on an incomplete review of the evidence, and all affirmed their previous conclusions that pneumoconiosis did not contribute to miner's death.<sup>3</sup> *Dillon v. Peabody Coal Co.*, 11

---

<sup>3</sup> Dr. Bush found that, "the report of Dr. Green... arrived at conclusions and interpretations that are far outside the realm of reasonable medical certainty based on the clinical and pathologic information concerning Mr. Chapman." Employer's Exhibit 8 at 2. Dr. Zaldivar found that Dr. Green's opinion was "based on an insufficient number of

BLR 1-113 (1988); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986). As the administrative law judge rationally discredited the only medical report concluding that pneumoconiosis contributed to the miner's death, we, therefore, affirm the administrative law judge's finding that the evidence of record was insufficient to establish death due to pneumoconiosis. See *Sparks*, 213 F.3d at 190, 22 BLR at 2-259; *Shuff*, 967 F.2d 977, 16 BLR 2-90; *Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

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*, 12 BLR 1-149; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis. See *Sparks*, 213 F.3d at 190, 22 BLR at 2-259; *Shuff*, 967 F.2d at 977, 16 BLR at 2-90; *Trumbo*, 17 BLR at 1-85.

---

records" as he "did not review the bulk of the medical records available" and based on "faulty reasoning" as he was not aware that the miner's renal failure caused by the accumulation of toxic products due to the stopping of dialysis, contributed to death. Employer's Exhibit 9 at 3-5. Dr. Crisalli found that Dr. Green did not rely on "a complete set of data" and that his assumption that "respiratory impairment was the primary cause of death" was not valid or supported by the clinical data. Employer's Exhibit 9 at 4-5; Dr. Castle found that Dr. Green's conclusions "demonstrate the marked disadvantage at arriving at conclusions based upon an inadequate database." Employer's Exhibit 10 at 6.

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

SO ORDERED.

---

ROY P. SMITH  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge

---

JUDITH S. BOGGS  
Administrative Appeals Judge