

BRB No. 93-0580 BLA

DELORSE J. LAWSON)
(Widow of SIMON T. LAWSON))
)
Claimant-Petitioner)
)
v.)
)
ISLAND CREEK COAL 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 of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Delorse J. Lawson, Monaville, West Virginia, *pro se*.
Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: SMITH, BROWN, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant¹, without the assistance of counsel, appeals the Decision and Order

¹Claimant is Delorse J. Lawson, widow of the miner, Simon T. Lawson, who filed an initial application for benefits with the Department of Labor on December 15, 1978, Director's Exhibit 15, and died on December 30, 1986, Director's Exhibit 25.

(89-BLA-1209 and 90-BLA-1628) of Administrative Law Judge Paul H. Teitler denying benefits on a 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.* This case involves a duplicate claim. The miner's first claim for benefits was denied on February 1, 1980. Director's Exhibit 15. The miner filed a second claim for benefits on August 27, 1984, and claimant filed a survivor's claim on June 24, 1988. Director's Exhibit 25. The miner's and survivor's claims were consolidated by an Order issued on May 17, 1990.

Pursuant to 20 C.F.R. Part 718, the administrative law judge credited claimant with at least twenty-seven years of qualifying coal mine employment and found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(2), 718.203(b), but insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204 and a material change in conditions pursuant to 20 C.F.R. §725.309.² The

²The administrative law judge erred in finding that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309 as the record contains evidence which, if fully credited, could change the prior administrative result. See Decision and Order at 14; Director's Exhibit 13; *Shupink v. LTV Steel Co.*, 17 BLR 1-24 (1992). Any error is harmless, however, as the administrative law judge properly considered all of the evidence of record in making his findings on the merits. See

administrative law judge further found that claimant failed to establish that pneumoconiosis caused or contributed to the miner's death pursuant to 20 C.F.R. §718.205. Accordingly, benefits were denied on the miner's and survivor's claims.

Shupink, supra; Larioni v. Director, OWCP, 6 BLR 1-1276 (1984).

On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.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. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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).

Pursuant to Section 718.204(c)(1), the administrative law judge properly found that none of the five pulmonary function studies of record produced qualifying results. Decision and Order at 7; Director's Exhibits 6, 13, 15, 17. Pursuant to Section 718.204(c)(2), the administrative law judge properly found that neither of the two arterial blood gas studies of record produced qualifying results. Decision and

³We affirm the administrative law judge's findings pursuant to Sections 718.202(a)(2) and 718.203(b) as they are unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Order at 8; Director's Exhibits 7, 15. Therefore, we affirm the administrative law judge's findings pursuant to Section 718.204(c)(1) and (2).⁴

Pursuant to Section 718.204(c)(4), the administrative law judge considered the medical opinions of fifteen physicians. Director's Exhibits 8, 13, 15, 17, 18, 21, 25; Employer's Exhibits 1, 3-6, 8. Noting that only Dr. Romano stated that the miner was disabled from doing any sort of physical or strenuous work, Director's Exhibit 13, the administrative law judge permissibly accorded determinative weight to the opinions of Drs. Stewart, Kleinerman, Hansbarger, Thavaradhara, Morgan, Caffrey, Fino, Zaldivar and Naeye, that the miner was not disabled by any respiratory impairment, based on their superior qualifications and his conclusion that their opinions were supported by the objective evidence of record. Decision and Order at 13; Director's Exhibits 8, 21, 25; Employer's Exhibits 3-6, 8; see *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Thus, we affirm the administrative law judge's finding pursuant to Section 718.204 and the denial of benefits on the miner's claim.

Pursuant to Section 718.205, the administrative law judge did not apply the

⁴There is no evidence of cor pulmonale with right-sided congestive heart failure; thus, total respiratory disability cannot be established pursuant to Section 718.204(c)(3).

proper legal standard in determining that claimant failed to establish that the miner's death was due to pneumoconiosis. Decision and Order at 13. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has construed the "substantially contributing cause" standard of Section 718.205(c)(2) to encompass situations in which pneumoconiosis hastened the miner's death. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

Nonetheless, the record in this case reveals no evidence that pneumoconiosis contributed in any way to the miner's death. The administrative law judge noted that none of the medical opinions of record stated that pneumoconiosis contributed in any way to the miner's death, Director's Exhibit 25; Employer's Exhibit 1, 3-6, 8, and permissibly accorded determinative weight to the opinions of the board certified pathologists, Drs. Kleinerman, Naeye, Caffrey, and Hansbarger, based on their superior qualifications. Decision and Order at 13; Director's Exhibit 25; Employer's Exhibit 8; see *Scott, supra*; *Wetzel, supra*. The administrative law judge noted that while Dr. Spangler stated that pneumoconiosis was a complicating and contributing cause of the miner's death, Decision and Order at 13; Director's Exhibit 25, he issued a subsequent letter in which he stated that, after review of additional medical evidence, he is "forced to agree with the other evaluators who found no association between [the miner's] death and his black lung disease." Decision and Order at 14; Employer's Exhibit 1.

Therefore, we deem the administrative law judge's error harmless, see *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), and affirm his finding pursuant to Section 718.205 and the denial of benefits on the survivor's claim.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge