

BRB No. 98-1330 BLA

BETTY WELLS)	
(Widow of BENTON WELLS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ANDALEX RESOURCES,)	DATE ISSUED: <u>7/9/99</u>
INCORPORATED)	
)	
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 on Remand of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Joseph Kelley (Monhollon & Kelley, P.S.C.), Madisonville, Kentucky, for claimant.

James G. Fogle (Ferreri, Fogle, Pohl & Picklesimer), Louisville, Kentucky, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order on Remand (95-BLA-0669) of Administrative Law Judge Rudolf L. Jansen denying benefits on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety

¹Claimant is the widow of the miner, Benton Wells, who died on July 7, 1991. Director's Exhibits 1, 9.

Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). This case is before the Board for the second time. In the original Decision and Order, the administrative law judge, based on the parties' stipulation, credited the miner with twenty-two and one-half years of coal mine employment and adjudicated this survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge 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)(4)² and 718.203(b). The administrative law judge also found the evidence sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2).³ Accordingly, the administrative law judge awarded benefits.

In response to employer's appeal, the Board affirmed the administrative law judge's findings at 20 C.F.R. §§718.202(a)(1)-(3) and 718.205(c)(1) and (c)(3). However, the Board vacated the administrative law judge's findings at 20 C.F.R. §§718.202(a)(4) and 718.205(c)(2), and remanded the case for further consideration of the evidence. *Wells v. Andalex Resources, Inc.*, BRB No. 97-0124 BLA (Sept. 25, 1997)(unpub.). On remand, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge further found the evidence insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Claimant also contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)(2). Employer responds, urging affirmance of the administrative law judge's Decision and Order on Remand. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

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

²The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3).

³The administrative law judge found the evidence insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)(1) and (c)(3).

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).

Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).⁴ The administrative law judge considered the relevant medical opinions of Drs. Anderson and Givens.⁵ Whereas Dr. Givens opined that the miner suffered from pneumoconiosis, Director’s Exhibit 13; Claimant’s Exhibit 4, Dr. Anderson opined that the miner did not suffer from pneumoconiosis, Employer’s Exhibit 2. The administrative law judge properly discredited the opinion of Dr. Givens because he found Dr. Givens’ opinion was not well reasoned and documented.⁶ See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Thus, we reject claimant’s assertions that the administrative law judge applied an incorrect legal standard in considering Dr. Givens’ opinion, and that the

⁴In a survivor’s claim filed after January 1, 1982, a claimant must establish the existence of pneumoconiosis under any of the methods available at 20 C.F.R. §718.202(a)(1)-(4) before establishing death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

⁵The record also contains a medical report from Dr. Frederickson dated May 13, 1983, in which he opined that his examination of the miner revealed evidence of a mild obstructive airway disease, but the doctor did not relate the miner’s condition to coal dust exposure. Director’s Exhibit 11.

⁶The administrative law judge stated that “Dr. Givens’ opinion is not sufficiently explained or supported by the existing record.” Decision and Order on Remand at 3-4. The administrative law judge observed that “none of Dr. Givens’ treatment records contain a reference to chronic obstructive lung disease or pneumoconiosis.” *Id.* at 4. The administrative law judge also observed that “Dr. Givens consistently diagnosed heart conditions and chronic sinusitis, not chronic obstructive pulmonary disease.” *Id.* Further, the administrative law judge stated that “[w]hile Dr. Givens’ failure to diagnose chronic obstructive pulmonary disease during his treatment of the miner would not alone detract from his opinion, Dr. Givens also failed to provide any explanation for his subsequent diagnosis beyond an ad hoc reference to the June 1984 x-ray, an x-ray that was administered at another hospital and that he found ‘consistent with’ his diagnosis in the 1994 letter.” *Id.*

administrative law judge mischaracterized Dr. Givens' opinion.⁷

⁷The record indicates that Dr. Givens referred the miner to Dr. Frederickson for an examination. Director's Exhibit 11. Although Dr. Frederickson opined that his examination of the miner revealed evidence of a mild obstructive airway disease, *id.*, the record does not indicate that Dr. Givens opined that the miner suffered from a chronic obstructive pulmonary disease during his treatment of the miner. Hence, the administrative law judge accurately stated that "none of Dr. Givens' treatment records contain a reference to chronic obstructive lung disease or pneumoconiosis." Decision and Order on Remand at 4.

Claimant also asserts that the administrative law judge should have accorded determinative weight to Dr. Givens' opinion due to his status as the miner's treating physician. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that the opinions of treating physicians are entitled to greater weight than those of nontreating physicians. See *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). The court has also indicated, however, that this principle does not alter the administrative law judge's duty, as fact-finder, to evaluate the credibility of the treating physician's opinion. See *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). In the present case, the administrative law judge rationally found that Dr. Givens' opinion is insufficient to establish the existence of pneumoconiosis because he found it to be not well reasoned and documented.⁸ See *Clark, supra*; *Fields, supra*; *Lucostic, supra*; *Fuller, supra*. Further, the administrative law judge observed that "Dr. Givens has no particular qualifications in pulmonary medicine or cardiology." Decision and Order on Remand at 6. Thus, we reject claimant's assertion that the administrative law judge should have accorded determinative weight to Dr. Givens' opinion because Dr. Givens was the miner's treating physician. Moreover, we hold that substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Hence, in view of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an essential element of entitlement under 20 C.F.R. Part 718 in a survivor's claim, see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986), we affirm the administrative law judge's denial of

⁸The administrative law judge observed that "[a]lthough the opinion of a treating physician may be given heightened evidentiary weight, it still must be adequately reasoned and documented in order to support a finding under Section 718.202(a)(4)." Decision and Order on Remand at 3.

benefits.⁹

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

⁹In view of our disposition of the case at 20 C.F.R. §718.202(a), we decline to address claimant's contention with regard to 20 C.F.R. §718.205(c)(2). See *Trumbo, supra*; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).