

BRB No. 02-0148 BLA

SHELVIE J. BARTON )  
(Widow of EMMETT R. BARTON) )  
) )  
Claimant-Petitioner )  
) )  
v. )  
) )  
SEA B MINING COMPANY )  
) )  
and )  
) )  
ACORDIA EMPLOYERS SERVICE )  
CORPORATION )  
) )  
Employer/Carrier- )  
Respondents )  
) )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
) )  
Party-In-Interest )

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Shelvie J. Barton, Townville, South Carolina, *pro se*.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (00-BLA-0419) of Administrative Law Judge Richard T. Stansell-Gamm (the administrative law judge) on a survivor's claim<sup>1</sup> filed pursuant to the provisions of Title IV of the Federal Coal Mine Health

<sup>1</sup>Claimant, the miner's widow, filed the instant claim on November 17, 1998.

and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).<sup>2</sup> The administrative law judge initially noted that the miner had been awarded benefits under the Act during his lifetime, and determined that claimant was an eligible survivor of the miner. Considering the instant claim on its merits, the administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment under 20 C.F.R. §§718.202 and 718.203. The administrative law judge also found, however, that claimant was not entitled to the irrebuttable presumption of death due to pneumoconiosis provided at 20 C.F.R. §718.304 and failed to establish death due to pneumoconiosis under 20 C.F.R. §718.205(c). Accordingly, benefits were denied. In response to claimant's *pro se* appeal, employer urges the Board to affirm the decision below as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has not filed a brief in the 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. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We 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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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Director's Exhibit 44.

<sup>2</sup>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 20 C.F.R. Parts 718, 722, 725, and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, such as in the instant case, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. See 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Under 20 C.F.R. §718.205(c)(2), death will be considered to be due to pneumoconiosis if pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. Pursuant to the revised regulation at 20 C.F.R. §718.205(c)(5), pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5). In the instant case, employer concedes that the "overwhelming medical evidence in the record" establishes that the miner had pneumoconiosis, which arose out of his coal mine employment. Employer's Brief at 2.<sup>3</sup> Thus, claimant must establish that the miner's death was due to pneumoconiosis under 20 C.F.R. §718.205(c).

The administrative law judge determined that the relevant evidence of record fails to establish that the miner's coal workers' pneumoconiosis caused, substantially contributed to or hastened the miner's demise. The evidence relevant to the cause of the miner's death is as follows: Records from the Anderson Area Medical Center in Anderson, South Carolina, indicate that the miner was hospitalized from August 11, 1998 to September 14, 1998, and on September 16, 1998 - the day he died. Director's Exhibits 51, 52. In the Discharge Summary for September 14, 1998, Dr. Malik listed the following "Final Diagnos[e]s:" metastatic gastric carcinoma to brain and lung and mediastinum; right-sided pancoast syndrome; COPD; hiatal hernia; inanition cachexia syndrome; SIADH; sepsis; pneumonia; right vocal cord paralysis with suspected aspiration; severe constipation; coronary artery disease; diabetes mellitus and prostatism. Director's Exhibit 51. In his Consultation Note for September 16, 1998 under "Impression" Dr. Kunkel listed, *inter alia*, hypotension; chest pain; ASCAD; "COPD/pneumoconiosis, O2 dependent, now with marked O2 requirement, with post-obstructive right lower lobe infiltrate, empirically being treated for pneumonia as ordered per Dr. Malik, with Unasyn and Cefobid;" diabetes mellitus; metastatic gastric cancer; pancytopenia; renal insufficiency, and DNR status, as per patient and family request. Director's Exhibit 52. In the Death Summary detailing the miner's demise, Dr. Malik listed the following "Final Diagnos[e]s:" severe dehydration with shock; probable underlying pulmonary embolism; metastatic gastric carcinoma to brain, lymph nodes, lung and peritoneal cavity; severe COPD; coronary artery disease and history of hiatal hernia. *Id.*

The miner's death certificate, completed by Dr. Kunkel, indicates that the miner died

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<sup>3</sup>Employer concedes that claimant is the miner's widow and is eligible as the miner's widow to be considered for benefits under the Act. Employer's Brief at 2.

on September 19, 1998 due to gastric carcinoma. Coal miner's pneumoconiosis, "ASCAD" and possible sepsis are listed as conditions leading to the immediate cause, with the underlying cause listed last. Director's Exhibit 49.

Dr. Woodward performed the autopsy, and opined that the cause of the miner's death was pulmonary embolus to the right pulmonary artery. Director's Exhibit 50. He also stated:

This 62 year old male was known to have carcinoma. He developed respiratory distress and died. Permission for a complete autopsy was granted by the next of kin, the wife.

The autopsy demonstrated a large pulmonary embolus to the right pulmonary artery. Cardiomegaly was present with hypertensive cardiovascular disease and arteriosclerotic cardiovascular disease. Extensive edema and congestion were present in the lungs. A primary carcinoma with ulceration was observed within the stomach which extended to the serosal surface. The lung contains metastatic foci in the background of emphysema and marked anthroctic staining. Metastatic carcinoma was identified within both adrenals, both kidneys, the omentum, and in peritoneal implants as well as the brain.

In my opinion, the cause of death was a pulmonary embolus secondary to widely metastatic carcinoma. Based on this examination, the manner of death is natural.

Director's Exhibit 50.

Dr. Crouch, in her pulmonary pathology consultation report dated March 3, 1999, diagnosed metastatic carcinoma consistent with gastric primary and coal dust deposition. She stated that the histologic changes were insufficient for a diagnosis of simple coal workers' pneumoconiosis. Dr. Crouch also opined that occupational coal dust exposure did not cause any significant functional impairment and did not contribute or otherwise hasten the miner's death due to pulmonary thromboembolism in the setting of metastatic gastric carcinoma. Dr. Crouch added that occupational coal dust exposure does not contribute to the pathogenesis of gastric carcinoma. Director's Exhibit 59.

Dr. Caffrey opined, in his report dated August 21, 1999, that the miner's death was due to primary adenocarcinoma of the stomach "which metastacized widely to the lung, brain, adrenals, etc." Director's Exhibit 72. Dr. Caffrey opined that the miner's exposure to coal dust did not contribute to the pathogenesis of his gastric carcinoma. He concluded that the miner suffered from other medical conditions unrelated to his coal mine employment such as diabetes mellitus with significant atherosclerosis, as evidenced by left carotid artery

stenosis which required surgery. *Id.*

In his report dated September 10, 1999, Dr. Tomashefski opined that the underlying cause of the miner's death was metastatic gastric adenocarcinoma, with pulmonary emboli as an immediate contributory cause of death. *Id.* Dr. Tomashefski found that the evidence supported a gastric primary lesion, and opined that the miner's minimal, simple coal workers' pneumoconiosis was not a cause or a contributory factor in his death. He added that the miner's primary gastric adenocarcinoma was not caused by coal dust exposure or coal workers' pneumoconiosis. Dr. Tomashefski indicated that the cause of gastric cancer is unknown and that the evidence for a carcinogenic role of coal mine dust in causing gastric cancer is inconclusive. *Id.*

In his report dated October 20, 1999, Dr. Buddington attributed the miner's death to his "widely disseminated poorly differentiated adenocarcinoma which apparently arose in the stomach." Director's Exhibit 75. He added: "Based on the autopsy evaluation, it is reasonable to assume that [the miner's] coal workers' pneumoconiosis would have caused him some degree of disability while he was alive. However, it should be emphasized that this is in no way the cause of death." *Id.*

The administrative law judge initially noted that of the many physicians who considered the relationship between the miner's coal dust exposure and gastric cancer, only Dr. Kunkel expressed a connection by indicating on the death certificate that the immediate cause of death was metastatic gastric carcinoma due to (or as a consequence of) coal miner's pneumoconiosis. *See* Director's Exhibit 49. The administrative law judge accorded little probative weight to Dr. Kunkel's conclusion because it is neither reasoned nor as well documented as the contrary medical opinions rendered by Drs. Caffrey, Tomashefski. The administrative law judge also found that the opinions of Drs. Caffrey and Tomashefski were supported indirectly by the opinion of Dr. Woodward, the autopsy prosector, and the opinion of Dr. Buddington. The administrative law judge thus determined that the evidence fails to establish that the miner's coal workers' pneumoconiosis caused, substantially contributed to or hastened his death.

We affirm the administrative law judge's finding that claimant has failed to prove that the miner's coal workers' pneumoconiosis caused, substantially contributed to or hastened his death as it is rational, supported by substantial evidence and in accordance with law. The administrative law judge permissibly accorded little probative weight to Dr. Kunkel's opinion, expressed in the death certificate, that the immediate cause of death, namely metastatic gastric carcinoma, was due to (or as a consequence of) coal miner's pneumoconiosis, *see* Director's Exhibit 49, because it is neither reasoned nor as well documented as the contrary medical opinions expressed by Drs. Caffrey and Tomashefski. *See Smith v. Camco Inc.*, 13 BLR 1-17 (1989); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19

(1987); *see also Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The administrative law judge correctly noted that while the miner's medical history informed Dr. Kunkel about the miner's pneumoconiosis and Dr. Kunkel attended the miner "in his last hours," he did not provide any explanation for his assessment that pneumoconiosis caused the miner's stomach cancer. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988); *see* Director's Exhibit 52. The administrative law judge further found that Dr. Kunkel did not have the benefit of the autopsy report and the subsequent pathological findings of "minimal amounts of coal workers' pneumoconiosis," evidence which other medical experts of record relied on to determine that coal workers' pneumoconiosis was not a factor in the miner's demise. *See Fuller v. Gibraltar Coal Co.*, 6 BLR 1-1291 (1984); Director's Exhibits 59, 72, 75; Decision and Order at 13. The administrative law judge also determined, within his discretion, that the opinions of Drs. Caffrey and Tomashefski, that the miner died due to gastric carcinoma which was unrelated to his coal mine employment or coal workers' pneumoconiosis, *see* Director's Exhibit 72, were well documented and reasoned and, consequently, were more probative medical opinions indicating no relationship between the miner's coal workers' pneumoconiosis and cancer. *See generally Doss v. Director, OWCP*, 53 F.3d 654, 19 BLR 2-181 (4th Cir. 1995).

Based on the foregoing, we affirm the administrative law judge's finding that claimant failed to meet her burden to establish death due to pneumoconiosis under 20 C.F.R. §718.205(c) as it is supported by substantial evidence. We, therefore, affirm the administrative law judge's denial of benefits in the instant survivor's claim.

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge