

BRB No. 98-1247 BLA

PAULINE A. PATSY	)		
(Widow of STEVE J. PATSY)	)		
	)		
Claimant-Respondent	)		
	)		
v.	)		
	)		
ISLAND CREEK COAL COMPANY	)	DATE	ISSUED:
	)		
Employer-Petitioner	)		
	)		
DIRECTOR, OFFICE OF WORKERS'	)		
COMPENSATION PROGRAMS, UNITED	)		
STATES DEPARTMENT OF LABOR	)		
	)		
Party-in-Interest	)	DECISION and ORDER	

Appeal of the Decision and Order - Awarding Benefits of George P. Morin, Administrative Law Judge, United States Department of Labor.

Robert J. Bilonick (Pawlowski, Tulowitzki & Bilonick), Ebensburg, Pennsylvania, for claimant.

William S. Mattingly (Jackson & Kelly), Morgantown, West Virginia, for employer.

Before: BROWN and MCGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (97-BLA-1185) of Administrative Law Judge George P. Morin 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). Initially, the miner filed, in April, 1977, a claim for benefits that was denied by the district director in October, 1980. Decision and Order at 3; Director's Exhibit 18. In June, 1982, the miner filed a second claim that was denied by Administrative Law Judge Ainsworth H. Brown on October 25,

1988, and the Board affirmed the denial on July 20, 1990. Decision and Order at 3; Director's Exhibit 19. The miner died on June 18, 1996. Decision and Order at 3; Director's Exhibit 5. Claimant, the miner's widow, filed a survivor's claim in August 6, 1996. Decision and Order at 3; Director's Exhibit 1. The administrative law judge found that employer conceded the existence of pneumoconiosis which arose out of the decedent's coal mine employment and credited the miner with more than thirty-four years of coal mine employment. Decision and Order at 2, 10. Considering the claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that coal worker's pneumoconiosis was a substantially contributing cause of the miner's death. See 20 C.F.R. §718.205(c)(2). Accordingly, benefits were awarded, commencing June 1996, pursuant to 20 C.F.R. §725.503. Employer, on appeal, contends that the administrative law judge erred in awarding benefits. Claimant has submitted a response brief supporting affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has submitted a letter stating that he will not respond to the appeal unless specifically requested to do so by the Board.<sup>1</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 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).

In order to establish entitlement to survivor's benefits in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; see

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<sup>1</sup> Inasmuch as the administrative law judge's findings of thirty-four years of coal mine employment, that claimant established the existence of pneumoconiosis arising out of the miner's coal mine employment and that entitlement commences as of June, 1996, are not contested on appeal, we affirm these findings. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

*Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The instant case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit which has held that evidence which establishes that pneumoconiosis hastened the miner's death satisfies the portion of Section 718.205(c)(2) which requires proof that pneumoconiosis was a substantially contributing cause or factor in the miner's death. See *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we affirm the administrative law judge's finding that claimant met her burden under Section 718.205(c)(2) as it is rational and supported by substantial evidence. On appeal, employer argues that the administrative law judge erred in relying upon the opinion of Dr. Perper over the contrary opinions of Drs. Naeye, Kleinerman, Bush, Morgan, Renn and Zaldivar. Employer's arguments are without merit.

Dr. Perper, who is Board-certified in Anatomical, Clinical, and Forensic Pathology, reviewed the autopsy report and slides and the miner's hospital and medical records and opined that the concurrent causes of death were pulmonary embolism, coal workers' pneumoconiosis, emphysema and lung cancer, which he believed were causally related to or complications of coal workers' pneumoconiosis and exposure to coal dust and silica. Claimant's Exhibit 1 at 18. Dr. Perper cited medical literature that he claimed established a causal relationship between occupational exposure to silica-containing coal dust and the development of lung cancer and emphysema. Claimant's Exhibit 1 at 19-30. Dr. Perper further opined that the coal workers' pneumoconiosis with related emphysema and lung cancer hastened the miner's death by causing a reduction in his blood oxygen levels. Claimant's Exhibit 1 at 19. Dr. Perper's *curriculum vitae* documents his research and publication in the field of forensic pathology. Claimant's Exhibit 1. The administrative law judge stated that Dr. Perper discussed the recent medical literature which supported his position that there is a causal relationship between coal dust and silica exposure and the causes of death including pneumoconiosis, emphysema and adenocarcinoma. Decision and Order at 11. After considering all of the medical evidence relevant to the cause of the miner's death, the administrative law judge concluded that the most credible and persuasive medical opinion was Dr. Perper's. Decision and Order at 13. The administrative law judge explained that he gave controlling weight to Dr. Perper's opinion because he found that it was well-documented, well-reasoned and best supported by the objective medical evidence of record and as Dr. Perper convincingly cited recent medical literature to support the position that there is a causal connection between pneumoconiosis, emphysema and lung cancer. Decision and Order at 11. The

administrative law judge concluded that pneumoconiosis hastened the miner's death and was thus a substantially contributing cause of the miner's death pursuant to Section 718.205(c)(2). Decision and Order at 13.

Employer argues that the administrative law judge erred in crediting the opinion of Dr. Perper over the contrary opinions of Drs. Naeye, Kleinerman, Bush, Morgan, Renn and Zaldivar since he failed to state the relative weight he assigned to the physicians based on their varying qualifications, credentials and experience. The administrative law judge specifically stated that Drs. Bush and Kleinerman are Board-certified in Anatomical and Clinical Pathology and that Drs. Zaldivar and Renn were Board-certified in internal medicine and pulmonary diseases. Decision and Order at 6, 8; Employer's Exhibits 4, 6-7, 10. In addition, the administrative law judge clearly considered the relative qualifications of the physicians as he implicitly found the opinions of the pathologists entitled to more probative value and gave diminished weight to the opinions of Drs. Renn and Zaldivar since "these pulmonologists do not have the expertise to examine and review the pathology evidence." Decision and Order at 12. Employer also contends that the administrative law judge's crediting of Dr. Perper's conclusion as supported by the objective evidence conflicts with his own finding that Dr. Perper used an incorrect standard to diagnose complicated pneumoconiosis. In finding that entitlement pursuant to Section 718.205(c)(3) was not established, the administrative law judge found that the only physician who concluded that the evidence demonstrated the existence of complicated pneumoconiosis, Dr. Perper, employed a radiographic standard instead of a pathological standard. Decision and Order at 11. After the administrative law judge addressed the existence of complicated pneumoconiosis at Section 718.304(b), he discussed whether pneumoconiosis was a substantially contributing cause of death pursuant to Section 718.205(c)(2). Although employer has identified a factor that the administrative law judge could have used to diminish the credibility of Dr. Perper's opinion, the administrative law judge was not required to so find.<sup>2</sup> See generally *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The administrative law judge thus permissibly credited Dr. Perper's opinion as he found that Dr. Perper convincingly discussed recent medical literature supporting the position that there is

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<sup>2</sup> In his report, Dr. Perper offered a detailed explanation of his finding that coal worker's pneumoconiosis with complicating emphysema and lung cancer was a substantially contributing cause of death. Claimant's Exhibit 1. In addressing whether the miner's coal worker's pneumoconiosis and related complications were associated with the miner's occupational dust exposure, Dr. Perper stated that the miner had thirty-two to thirty-six years of occupational exposure to coal mine dust which resulted in coal worker's pneumoconiosis and complicating emphysema and lung cancer. *Id.*

a causal connection between coal worker's pneumoconiosis, centrilobular emphysema and lung cancer and as he provided a well-reasoned and thorough report. Decision and Order at 12; Claimant's Exhibit 1; see generally *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985).

Finally, employer argues that the administrative law judge ignored relevant evidence in that he did not include a detailed discussion of the reports of Drs. Naeye, Kleinerman, Bush, Morgan, Renn and Zaldivar and that the administrative law judge did not include a discussion of the substance of the deposition testimony provided by Drs. Kleinerman and Perper nor did he independently evaluate the medical literature and the interpretations and conclusions drawn from the articles by the various physicians. Employer concludes that the administrative law judge conducted a selective review of the medical evidence of record. Employer's argument has no merit and amounts to a request for the Board to reweigh the evidence, as the administrative law judge discussed adequately the findings of Drs. Naeye, Kleinerman, Bush, Morgan, Renn and Zaldivar. See Decision and Order at 4-13; see generally *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). 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*, *supra*; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Therefore, we affirm the administrative law judge's finding that coal worker's pneumoconiosis was a substantially contributing cause of the miner's death as supported by substantial evidence.<sup>3</sup> See 20 C.F.R. §718.205(c)(2).

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<sup>3</sup> We note that the administrative law judge initially cited the hastening death standard enunciated in *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989) and that his consideration of the evidence and findings under 20 C.F.R. §718.205(c)(2) are in accordance with that standard.

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

SO ORDERED.

JAMES F. BROWN  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

MALCOLM D. NELSON, Acting  
Administrative Appeals Judge