

BRB No. 99-0714 BLA

M. YVONNE PRICE )  
(Widow of THOMAS PRICE) )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 BETH ENERGY MINES, INCORPORATED ) DATE ISSUED:  
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 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 Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

A. Judd Woytek (Marshall, Dennehey, Warner, Coleman and Goggin), Bethlehem, Pennsylvania, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (98-BLA-1282) of Administrative Law Judge Ralph A. Romano 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).<sup>1</sup> Based on the filing date of the survivor's claim, the

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<sup>1</sup> The administrative law judge noted that the miner filed a living miner's claim on December 9, 1976, which was denied by the district director. Director's Exhibit 24. The miner filed a second claim for benefits on January 29, 1987, although the miner did not actually receive federal benefits because they were offset by benefits he was already receiving from the state of Pennsylvania. Director's Exhibit 24; Decision and Order at 2.

administrative law judge applied the regulations found at 20 C.F.R. Part 718. The administrative law judge credited the miner with twenty years of coal mine employment and found that pneumoconiosis arising out of coal mine employment was established. 20 C.F.R. §§718.202(a); 718.203(b). The administrative law judge determined that claimant established death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) and accordingly awarded benefits. Employer appeals, contending that the administrative law judge erred in failing to properly weigh the medical evidence at Section 718.205(c). Claimant responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.

The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

Employer contends that the administrative law judge erred in crediting the medical opinion of Dr. Delgavis, who was Board-certified in internal medicine and hematology, over the opinions of Drs. Galgon, Fino and Spagnolo, who were Board-certified in internal and pulmonary medicine. Employer further contends that the administrative law judge erred in according greater weight to Dr. Delgavis's opinion, as she offered no support for her opinion that death was caused or hastened by coal workers' pneumoconiosis, admitted that she never independently diagnosed coal workers' pneumoconiosis, admitted that she could not render, on her own, an opinion as to what role the miner's pulmonary condition played in his death, and was generally not qualified to make any opinions regarding whether the miner's coal workers' pneumoconiosis caused or hastened his death.

The evidence of record contains a death certificate dated September 14, 1997, which lists as the immediate cause of death pneumonia, and as other significant conditions respiratory insufficiency, chronic obstructive pulmonary disease, and left pleural effusion of questionable etiology, Director's Exhibit 3, and various hospital records from 1995 until the miner's death in 1997 treating him for various ailments, such as leukemia, diabetes, restrictive lung disease, "miner's lung," and hypoxemia. Director's Exhibit 8. The record also contains the medical opinions of four physicians. Drs. Galgon, Fino and Spagnolo, who were Board-certified in internal medicine and pulmonary disease, and who all determined

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The miner died on September 14, 1997, and his widow filed a survivor's claim on October 1, 1997. Director's Exhibit 1.

that pneumoconiosis played no role in causing, hastening or contributing to the miner's death, Employer's Exhibits 2, 3; Director's Exhibit 9, and Dr. Delgavis, a hematologist, who was the treating physician for the miner's leukemia. In a deposition, she stated that lung disease caused his death or hastened his death, but as employer points out she also stated that she was not qualified to answer when asked whether a person who has compromised lung function caused by pulmonary disease, specifically caused by coal workers' pneumoconiosis, would be likely to succumb more quickly to the effects of a malignant process. Director's Exhibit 23. No autopsy was performed.

The administrative law judge, citing *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997), determined that Dr. Delgavis's opinion was entitled to greater weight as she was the miner's treating physician, and because her opinion was well reasoned and supported by the evidence of record. The administrative law judge noted that the evidence of record documented the miner's pulmonary impairment up until the time of his last hospitalization, that he had pneumoconiosis and was totally disabled prior to his death and that Dr. Delgavis accounted for his extensive medical problems and smoking problems when she reasonably concluded that the miner's death was contributed to by many medical problems including lung disease. Additionally, the administrative law judge noted that she was the only physician who actually examined the miner and also reviewed the evidence. Decision and Order at 6. The administrative law judge further noted that although the other physicians are highly credentialled, none of them actually examined the miner, whereas Dr. Delgavis "was able to assess the Miner's condition first hand." *Id.* The administrative law judge therefore found that claimant established death due to pneumoconiosis at Section 718.205(c) and awarded benefits.

In her deposition testimony, Dr. Delgavis explained that, as a hematologist, the only pulmonary system evaluation she would do would be a review of systems and a physical examination listening to the lung fields. Director's Exhibit 23 at 17. Her conclusion was based solely on a physical examination, history, and a review of all the available medical records. Director's Exhibit 23 at 19. She did not perform any pulmonary function studies, nor independently diagnose coal workers' pneumoconiosis. Director's Exhibit 23 at 21. Additionally, she stated that she did not diagnose pneumoconiosis, but rather adopted the findings of other physicians. Director's Exhibit 23 at 25. She did not review the medical opinions of Drs. Galgon or Spagnolo. Director's Exhibit 23 at 24.

Although the administrative law judge may accord greater weight to the opinion of a treating physician, reasoned opinions are required. *Lango, supra*. As it does not appear that the administrative law judge properly considered the entirety of Dr. Delgavis's opinion, *i.e.*, her deposition testimony, we vacate and remand this case for further consideration. On remand, the administrative law judge should consider all of the physician's statements, and determine whether her opinion is reasoned, supported by the evidence, and whether it

outweighs the other opinions of record. *Lango, supra*; see *Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-215 (3d Cir. 1997); *Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995).

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits is affirmed in part, vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge