

BRB No. 99-0730 BLA

DOLORES RHOADES)	
(Widow of HAROLD RHOADES))	
)	
Claimant-Petitioner))
)	
v.)	DATE ISSUED:
)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Jeffrey S. Goldberg (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (1998-BLA-00787) of Administrative Law Judge Ainsworth H. Brown denying benefits 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).¹ The administrative law judge

¹ Claimant is the surviving spouse of the miner, Harold Rhoades, who died on April 11, 1997. See Decision and Order at 2; Director's Exhibit 2. The miner's

adjudicated this claim pursuant to 20 C.F.R. Part 718 and found that although the miner was awarded benefits on a claim filed during his lifetime, the medical opinion evidence of record failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant contends that the medical opinion of Dr. Kraynak was well-reasoned and that the administrative law judge erred in finding that Dr. Kraynak's opinion was insufficient to establish that pneumoconiosis was a substantially contributing cause of the miner's death.² The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

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 the 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to benefits pursuant to 20 C.F.R. §718.205(c), claimant must prove that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(a). For survivor's claims filed after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2), (4). The

widow filed a claim for benefits on February 6, 1998. See Decision and Order at 2; Director's Exhibit 1.

² We note that the record is devoid of evidence that would establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304 and, thus, is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(3). See *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it actually hastens the miner's death. *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 conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. Claimant's contention that the administrative law judge erred in finding that the medical opinion of Dr. Kraynak was insufficient to establish that pneumoconiosis substantially contributed to the miner's death pursuant to Section 718.205(c) is without merit. In finding that the evidence of record was insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c), the administrative law judge rationally relied on the death certificate which attributed the miner's death to hypertensive atherosclerotic cardiovascular disease. Decision and Order at 3; Claimant's Exhibit 1. The administrative law judge also considered Dr. Kraynak's March 1998 and October 1998 letters and his October 1998 deposition testimony wherein he opined that pneumoconiosis hastened the miner's death since he would have lived longer and would have been in a better position to fight off the cardiovascular disease if he did not have pneumoconiosis. Decision and Order at 3; Director's Exhibit 4; Claimant's Exhibits 2, 4. The administrative law judge acknowledged that Dr. Kraynak was the miner's treating physician until August 1995, but noted that Dr. Kraynak did not have any specific personal knowledge of the miner's status after that time. Decision and Order at 3. The administrative law judge rationally determined that Dr. Kraynak's conclusion was apparently based on facts relayed to him in a conversation with claimant after the miner's death. Decision and Order at 4. Thus, the administrative law judge reasonably acted within his discretion as fact-finder in concluding that the opinion of Dr. Kraynak, who had not seen the miner since 1995, was based on a limited knowledge of the miner's medical condition prior to or at the time of his death.³ Consequently, the administrative law judge rationally concluded that Dr. Kraynak's opinion was not based on a review of competent medical evidence. *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988); *Lucostic v. United States Steel Corp.*, 8 BLR 1-146 (1985); *Peskie*

³ The administrative law judge stated that "Dr. Kraynak failed to obtain any medical information or review any medical reports regarding the miner's condition prior to or at the time of his death." Decision and Order at 4.

v. United States Steel Corp., 8 BLR 1-126 (1985); Decision and Order at 3-4; Director's Exhibit 4; Claimant's Exhibits 2, 4. The administrative law judge has broad discretion in weighing and assessing the evidence of record in determining whether a party has met its burden of proof and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Thus, we affirm the administrative law judge's determination that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Claimant's failure to establish death due to pneumoconiosis, a requisite element of entitlement under 20 C.F.R. Part 718 in this survivor's claim, precludes entitlement thereunder. *Lukosevicz*, *supra*; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Accordingly, the Decision and Order of the administrative law judge denying benefits in this survivor's claim is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge