

BRB No. 97-1060 BLA

WANDA J. FRAKER	)	
(Widow of CLARENCE A. FRAKER)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
UNION CARBIDE CORPORATION	)	
	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Party-in-Interest	)	

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

John H. Skaggs (Calwell & McCormick), Charleston, West Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (95-BLA-2181) of Administrative Law Judge George P. Morin denying benefits on a 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). The administrative law judge noted that employer conceded eighteen years of coal mine employment and the existence of pneumoconiosis pursuant to 20 C.F.R.

§718.202(a). The administrative law judge found that the 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, he denied benefits.

On appeal, claimant contends that the administrative law judge failed to apply the proper legal standard pursuant to Section 718.205(c)(2). Claimant further asserts that the administrative law judge erred in weighing the medical opinions under Section 718.205(c)(2). Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.<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).

Pursuant to Section 718.205(c)(2), claimant contends that the administrative law judge applied the wrong legal standard because he required claimant to prove that pneumoconiosis was “the sole, or major cause of death.” Claimant's Brief at 7. Death will be considered due to pneumoconiosis if claimant establishes that pneumoconiosis was a substantially contributing cause of death. 20 C.F.R. §718.205(c)(2). The United States

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<sup>1</sup> We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a) and 718.205(c)(1), (3). See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that if pneumoconiosis hastens death in any way, it is a substantially contributing cause of death pursuant to Section 718.205(c)(2). *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993). Contrary to claimant's contention, the administrative law judge applied the *Shuff* standard and found that “[t]he preponderance of the evidence weighs against finding that the miner's death was in any way hastened by pneumoconiosis.” Decision and Order at 6. In so doing, the administrative law judge found that although the medical opinions of Drs. Gaziano and Rasmussen were legally sufficient to support a finding for claimant under Section 718.205(c)(2), Decision and Order at 4, they were outweighed by the contrary medical evidence. Therefore, we reject claimant's contention.

Claimant alleges that the administrative law judge erred by relying solely upon the numerical weight of the medical opinions submitted by employer. Claimant's Brief at 3-5. In weighing the medical opinions, the administrative law judge may not rely solely upon a mere “‘head count’ of the testifying physicians,” but should consider “‘the qualifications of the respective physicians, the explanation of their medical opinions, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses.’” See *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, BLR (4th Cir. 1997). The administrative law judge may accord less weight to a medical report that fails to set forth the medical documentation on which the physician based his or her opinion, see *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987), or which is inadequately reasoned or explained. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en*

*banc*).

Doctors Gaziano and Rasmussen opined that pneumoconiosis contributed to the miner's death. Dr. Gaziano, who is Board-certified in internal and pulmonary medicine, made no reference to any specific medical evidence in his brief opinion. Director's Exhibit 10. Dr. Rasmussen, who is Board-certified in internal medicine, reviewed the medical evidence and opined that even though the autopsy revealed only mild simple pneumoconiosis, the miner's extensive centrilobular emphysema was due in part to coal dust exposure and hastened his death. Claimant's Exhibit 1. Dr. Rasmussen cited medical studies that he claimed supported his view that coal dust exposure causes centrilobular emphysema. *Id.*

On the other hand, Drs. Hansbarger, Kleinerman, Naeye, and Bush, who are Board-certified in anatomical and clinical pathology, and Drs. Castle, Crissali, and Repsher, who are Board-certified in internal and pulmonary medicine, reviewed the medical evidence and opined that the pneumoconiosis found on autopsy was too mild to have hastened the miner's death due to cardiac and pulmonary failure. Employer's Exhibits 1-7, 9. They cited the minimal degree of pneumoconiosis present on the autopsy slides and the lack of any evidence of respiratory or pulmonary impairment until the onset of acute illness in September 1994. They also explained in detail their opinion that current medical literature does not support Dr. Rasmussen's assertion that coal dust is known to cause centrilobular emphysema, which they indicated is a type of emphysema caused by smoking. They opined that the miner's forty-five-year smoking history was the cause of his centrilobular emphysema.

Contrary to claimant's contention, the administrative law judge considered the

physicians' qualifications and the quality of their opinions. See *Akers, supra*. The administrative law judge acknowledged Dr. Gaziano's credentials, Decision and Order at 4, but permissibly assigned less weight to his two-sentence opinion because “Dr. Gaziano summarily conclude[d] that death was due to pneumoconiosis, but [did] not offer supporting evidence or [a] rationale . . . .” Decision and Order at 6; see *Akers, supra*; *Clark, supra*; *Fields, supra*. The administrative law judge also considered Dr. Rasmussen's qualifications, Decision and Order at 4, but reasonably declined to accord his opinion determinative weight in light of the “overwhelming weight of medical evidence from the several well-qualified, [B]oard-certified pathologists,” who he concluded had “roundly discredited” Dr. Rasmussen's conclusions. Decision and Order at 6; see *Akers, supra*; *Clark, supra*. Because the administrative law judge did not rely on a mere “head count,” we reject claimant's contention.

We also reject claimant's argument that the administrative law judge erred by crediting the opinions of pathologists over those of clinicians. Claimant's Brief at 5. The administrative law judge, as trier-of-fact, is not bound to accept the opinion of any particular medical witness or expert, but must consider all of the evidence and draw his or her own inferences. See *Lafferty v. Cannelton Industries, Inc.* 12 BLR 1-190, 1-192 (1989); *Clark, supra*; *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). The administrative law judge did so here, and offered valid reasons for his conclusions. Furthermore, claimant does not explain how the Board-certified pathologists who examined the lung tissue slides and reviewed the medical evidence of record were at a disadvantage in assessing the severity of the miner's pneumoconiosis compared to Drs. Gaziano and Rasmussen, who also based

their opinions on a record review. Finally, we reject claimant's assertion that the administrative law judge ignored the medical literature that supported Dr. Rasmussen's opinion regarding the etiology of the miner's centrilobular emphysema. Claimant's Brief at 6. The administrative law judge discussed the portions of the physicians' opinions relating to this issue, Decision and Order at 4-6, and permissibly credited the opinions of those who concluded that Dr. Rasmussen based his opinion on an inaccurate understanding of current medical knowledge. Therefore, we affirm the administrative law judge's finding that the evidence failed to establish that pneumoconiosis hastened the miner's death pursuant to Section 718.205(c)(2).<sup>2</sup> *Shuff, supra*.

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<sup>2</sup> The administrative law judge correctly noted that the autopsy prosector did not determine a cause of death. Director's Exhibit 8. Although the miner's death certificate listed pneumoconiosis as a condition leading to death, Director's Exhibit 7, review of the record revealed no medical opinion by the physician who completed the death certificate addressing whether pneumoconiosis hastened death. Decision and Order at 6; Director's Exhibit 9.

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

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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NANCY S. DOLDER  
Administrative Appeals Judge