

BRB No. 97-1193 BLA

CAROLINE RADACHY)	
(Widow of WILLIAM F. RADACHY))	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
LABELLE PROCESSING COMPANY)	
)	
)	
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 Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Donna M. Lowman (United Mine Workers of America), Belle Vernon, Pennsylvania, for claimant.

Christopher Pierson (Davies, McFarland & Carroll, P.C.), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-1178) of Administrative Law Judge Thomas M. Burke 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 accepted the parties' stipulation to thirty-three years of coal mine employment and the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), but 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 erred in weighing the

medical opinions pursuant to 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.¹

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 failed to accord proper weight to the autopsy prosector's opinion that pneumoconiosis contributed to the miner's death. Claimant's Brief at 3-5. For survivor's claims filed after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). The 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. *Lukosevic v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

The miner's death certificate listed the cause of death as cardiac arrest due to coronary artery disease. Director's Exhibit 11. Dr. Wecht, who is Board-certified in anatomical, clinical, and forensic pathology, performed the autopsy and diagnosed cardiovascular disease, chronic obstructive pulmonary disease, and passive congestion of the lungs, spleen, and liver. Director's Exhibit 12. Under the diagnosis of chronic obstructive pulmonary disease, Dr. Wecht listed anthracosilicosis, emphysema, and fibrosis. *Id.* He opined that the miner's "pneumoconiosis, which was the basis for his chronic obstructive pulmonary disease, was a substantial contributing factor in his death," due to cardiovascular disease. *Id.* Dr. Wecht based this conclusion upon his opinion that coal dust exposure played a dominant role in causing the miner's centrilobular emphysema. Claimant's Exhibit 1 at 51.

Dr. Naeye, who is Board-certified in anatomical and clinical pathology, reviewed the lung tissue slides, autopsy report, and hospital records. Employer's Exhibit 3. He concluded that the miner had simple pneumoconiosis which was "far too mild to have

¹ 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). See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

shortened his life.” *Id.* Dr. Naeye opined that the miner died due to an acute myocardial infarct, and that the centrilobular emphysema from which the miner suffered during life was due to cigarette smoking. *Id.* Dr. Naeye indicated that current medical studies show no significant association between coal dust exposure and centrilobular emphysema. Employer's Exhibit 4 at 16. Dr. Oesterling, Board-certified in anatomical and clinical pathology, examined the tissue slides and reviewed the autopsy report and the miner's medical records. Director's Exhibit 35. He diagnosed “minimal micronodular coalworkers' pneumoconiosis,” which was “insufficient to in any way contribute to [the miner's] demise” due to heart disease. *Id.* Dr. Oesterling stated that the pulmonary disease that the miner experienced was due to centrilobular emphysema, passive congestion of the lungs, and pulmonary atelectasis, none of which was related to coal dust exposure. *Id.* He indicated that current medical studies show no relationship between coal dust exposure and centrilobular emphysema. Employer's Exhibit 2 at 21-22. Finally, Dr. Wald, Board-certified in internal and pulmonary medicine, reviewed the medical evidence and concluded that the miner's pneumoconiosis “in no way contributed” to his death due to cardiac arrest due in turn to myocardial infarction. Employer's Exhibit 5.

Contrary to claimant's contention, the administrative law judge permissibly accorded greater weight to Dr. Naeye's opinion based on his “greater expertise in the subject of the effect of coal dust on lung tissue,” and his “familiar[ity] with the literature on whether coal mine dust causes clinically significant emphysema and the association between coal mining and centrilobular emphysema.” Decision and Order at 8; see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). In so doing, the administrative law judge relied on documentation in the record of Dr. Naeye's fourteen published papers and several book chapters on the subject of pneumoconiosis, his participation in studies of the heart and lung tissue of miners, and his review of the lung tissue of several thousand miners for the Department of Labor. Employer's Exhibit 4 at 8-9.

Review of the record indicates that Dr. Wecht, while also qualified in pathology, has not published or researched as extensively regarding pneumoconiosis.² Claimant's Exhibits 1, 2. Contrary to claimant's assertion that the administrative law judge impermissibly relied on the “numerical superiority” of Dr. Naeye's publications and lung tissue examinations, Claimant's Brief at 3, the administrative law judge permissibly cited these factors to explain why he found that Dr. Naeye had greater expertise with respect to pneumoconiosis and therefore was more credible. See *Clark, supra*. Because the administrative law judge is not required to accord determinative weight to the autopsy prosector's report, *Urgolites v. BethEnergy Mines, Inc.*, 17 BLR 1-20, 1-22 n.3 (1992); see *Gruller v. BethEnergy Mines Inc.*, 16 BLR 1-3 (1991); *Fetterman v. Director, OWCP*, 7 BLR 1-688 (1985), and provided valid reasons for his weighing of the evidence, we reject claimant's contention and affirm the administrative law judge's finding pursuant to Section 718.205(c)(2).³ See *Lukosevicz*,

² Dr. Wecht testified that of his 334 publications, one or two concerned pneumoconiosis, and that he has not participated in any studies concerning coal workers' pneumoconiosis. Claimant's Exhibit 1 at 8.

³ The administrative law judge made no finding pursuant to 20 C.F.R. §718.205(c)(3).

supra.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

However, review of the record reveals no evidence of complicated pneumoconiosis. See 20 C.F.R. §§718.205(c)(3), 718.304.