

BRB No. 99-1200 BLA

CHERLYN REINER)	
(Widow of LAMAR REINER))	
)	
Claimant-Respondent)	
)	
v.)	
)	
MANBECK DREDGING 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 of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

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

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

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

PER CURIAM:

Employer appeals the Decision and Order (98-BLA-1156) of Administrative Law Judge Paul H. Teitler awarding benefits in 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). The administrative law judge adjudicated this survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718. Employer concedes that the miner suffered from pneumoconiosis arising out of coal mine employment. Hearing Transcript at 15. The administrative law judge found the evidence sufficient to establish that the miner's death was due to

pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Claimant¹ responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

¹Claimant is the widow of the miner, Lamar Reiner, who died on December 4, 1997. Director's Exhibits 1, 3. The miner filed a claim for benefits on June 15, 1984. Director's Exhibit 15. On November 30, 1990, Administrative Law Judge Frank D. Marden issued a Decision and Order - Awarding Benefits. *Id.* Claimant filed a survivor's claim for benefits on January 8, 1998. Director's Exhibit 1.

Benefits are payable on survivor's claims filed on or after January 1, 1982 only when the miner's death was due to pneumoconiosis.² See 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). However, before any finding of entitlement can be made in a survivor's claim, a claimant must establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A claimant must also establish that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. See *Boyd, supra*. 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 a miner's death under 20 C.F.R. §718.205(c)(2) in a case in which the disease actually hastens his death. See *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

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

²Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.

20 C.F.R. §718.205(c).

this 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’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer contends that the administrative law judge erred in finding the evidence sufficient to establish that the miner’s death was due to pneumoconiosis at 20 C.F.R. §718.205(c). We disagree. The administrative law judge considered the hospital records, the death certificate, and the reports of Drs. Dittman and Kraynak. Whereas Dr. Kraynak opined that pneumoconiosis contributed to the miner’s death, Claimant’s Exhibit 1, Dr. Dittman opined that pneumoconiosis did not contribute to the miner’s death, Employer’s Exhibits 1, 3. The death certificate, signed by Charles Begansky, a deputy coroner, indicates that the immediate causes of the miner’s death were acute myocardial infarction and hypertensive atherosclerotic coronary artery disease. Director’s Exhibit 3. The death certificate also indicates that “other significant conditions” were healed myocardial infarction and coal workers’ pneumoconiosis. *Id.* The administrative law judge properly accorded greater weight to the opinion of Dr. Kraynak than to the contrary opinion of Dr. Dittman because he found Dr. Kraynak’s opinion to be better reasoned.³ See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Thus, we reject employer’s assertion that the administrative law judge erred in

³The administrative law judge stated that “Dr. Dittman concluded that ‘[a]lthough [the miner] may have previously been determined to have [coal workers’ pneumoconiosis], he died as a result of an acute myocardial infarction which was the result of coronary artery disease.’” Decision and Order at 4. The administrative law judge also stated that Dr. Dittman concluded that the miner’s ““ coronary artery disease was in no way related to [coal workers’ pneumoconiosis] and, therefore, pneumoconiosis can not in any way be implicated in causing, contributing to, or hastening his death.”” *Id.* The administrative law judge observed that “Dr. Dittman noted that the medical records clearly indicate that the miner had significant coronary artery disease.” *Id.* Further, the administrative law judge observed that although “Dr. Dittman also noted that the miner had chronic obstructive pulmonary disease..., he opined that the records do not suggest any ongoing respiratory complaints.” *Id.* In contrast, the administrative law judge stated that “[t]he hospital records and the widow’s testimony clearly establish that the miner was having trouble breathing at the time of his death.” *Id.* at 5. Therefore, the administrative law judge concluded, “I credit Dr. Kraynak’s opinion that the miner’s pneumoconiosis caused shortness of breath which aggravated his cardiac condition and hastened the miner’s death.” *Id.*; Claimant’s Exhibit 1.

weighing the conflicting medical evidence.⁴ Moreover, since the record does not indicate that Mr. Begansky possesses any relevant qualifications from which to assess the cause of the miner's death, we reject employer's assertion that the administrative law judge erred in failing to provide an explanation for dismissing the death certificate. See 20 C.F.R. §718.205(c); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988).

Finally, we hold that employer's assertion that the administrative law judge erred in failing to consider the medical records of Dr. Mohan lacks merit. Although the record contains an x-ray report, progress notes, and objective tests which were provided by Dr. Mohan,⁵ the record does not indicate that Dr. Mohan rendered a

⁴We reject employer's assertion that the administrative law judge erred in failing to explain why he accorded greater weight to the opinion of Dr. Kraynak than to the contrary opinion of Dr. Dittman, in view of the superior qualifications of Dr. Dittman. An administrative law judge is not required to defer to a doctor with superior qualifications. See *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Although the administrative law judge did not rely upon the physicians' qualifications in his weighing of the conflicting evidence, he did note the qualifications of the physicians. Decision and Order at 4-5.

⁵The administrative law judge stated that "Dr. Dittman reviewed the records of Dr. Frank Mohan from February 9, 1989 through December 3, 1997." Decision and

medical opinion which addressed the issue of whether the miner's death was due to pneumoconiosis. Director's Exhibits 5, 6; Employer's Exhibit 2. Thus, inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). See *Lukosevicz, supra*. We, therefore, affirm the administrative law judge's award of survivor's benefits.

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

SO ORDERED.

BETTY J. HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting

Order at 4. The administrative law judge further stated that Dr. Dittman's "report summarizes each of these records in detail." *Id.* The administrative law judge observed that "Dr. Dittman noted that in Dr. Mohan's records, the miner's lungs were examined and determined to be clear on several occasions." *Id.* at 5.

Administrative Appeals Judge