

BRB No. 99-1240 BLA

GRACE E. LONG )  
(Widow of THOMAS J. LONG) )  
 )  
Claimant-Respondent )  
 )  
v. )  
 )  
JEDDO-HIGHLAND COAL )  
COMPANY )  
 )  
and )  
 )  
LACKAWANNA CASUALTY )  
COMPANY )  
Employer/Carrier- )  
Petitioner )  
 )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, )  
UNITED STATES DEPARTMENT )  
OF LABOR )  
 )  
Party-in-Interest )

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

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

Before: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order - Awarding Benefits (98-BLA-0987) of Administrative Law Judge Paul H. Teitler on a survivor's

claim<sup>1</sup> 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 initially noted that benefits had been awarded in a separate miner's claim, and that the only issue before him was whether pneumoconiosis contributed to the miner's death. Decision and Order at 2, 3. Considering the merits of the claim under 20 C.F.R. Part 718, the administrative law judge found that claimant met her burden of proof to establish that pneumoconiosis contributed to the miner's death under 20 C.F.R. §718.205(c) pursuant to *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge committed reversible error in weighing the medical opinion evidence at Section 718.205(c). Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a brief in the appeal.

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 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).

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, such as in the instant case, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. See 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

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<sup>1</sup>Claimant, the miner's widow, filed the instant claim on July 15, 1997. Director's Exhibit 1. The miner's death certificate indicates that he died on May 21, 1997 due to pneumonia, as a consequence of coal workers' pneumoconiosis and Parkinson's disease. Director's Exhibit 2.

Under Section 718.205(c)(2), claimant must establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. See *Lukosevich, supra*. Pneumoconiosis will be considered to be a substantial contributing cause of the miner's death where it hastens death. *Id.*<sup>2</sup>

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<sup>2</sup>In the instant case, employer has conceded the existence of simple pneumoconiosis. Hearing Transcript at 9.

Employer contends that the administrative law judge acted in an inconsistent manner when he discredited the opinions of Drs. Galgon, Spagnolo and Fino<sup>3</sup>

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<sup>3</sup>Dr. Galgon opined that the miner's episodes of asthmatic bronchitis were related to aspiration caused by difficulty swallowing related to Parkinson's disease superimposed on his smoking-related chronic obstructive pulmonary disease, as were his episodes of pulmonary infections. He found that the miner died due to cardiorespiratory arrest secondary to bacterial pneumonia, the result of aspiration related to his inability to swallow due to Parkinson's disease. Dr. Galgon added, "His mild pneumoconiosis was not the cause of his death, nor was it a substantially contributing factor to his death." Employer's Exhibits 1, 2.

Dr. Spagnolo opined that the miner died due to "extreme malnutrition with wasting and weakness resulting in the inability to swallow properly, which ultimately resulted in aspiration and hydrostatic pneumonia. Because of his weakened condition, he developed respiratory failure, could not clear secretions, suffered a cardiac arrest and died. In addition, Mr. Long was immunocompromised by his prior cancer chemotherapy, underlying metastatic cancer, renal failure and malnutrition." Director's Exhibit 12. Dr. Spagnolo

because they did not examine the miner during his life or at the time of his death, while crediting the opinion of Dr. Simelaro, who likewise never examined the miner. Notwithstanding employer's specific contention regarding the administrative law judge's treatment of Drs. Galgon, Spagnolo and Fino, the administrative law judge additionally found that these consulting opinions, stating that the miner's Parkinson's disease caused him to be weak, to have difficulty swallowing and to aspirate, were not well reasoned and thus properly accorded less weight to this evidence. See *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

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further opined that there was "no objective medical evidence to indicate that coal workers' pneumoconiosis was in any way responsible for Mr. Long's death and there is no evidence to suggest that a pneumoconiosis had worsened or had led to any complication or contributed to his death." *Id.*

Dr. Fino opined that the miner's death was related to his weakened status due to Parkinson's disease. He found that the miner developed pneumonia and died. Dr. Fino indicated that coal mine dust inhalation did not cause, contribute to or hasten the miner's death. Employer's Exhibit 3.

Further, the administrative law judge did not act in an inconsistent manner when he credited Dr. Simelaro's consulting opinion.<sup>4</sup> Specifically, the administrative law judge permissibly found to be well reasoned Dr. Simelaro's opinion that if the miner aspirated due to Parkinson's disease he aspirated into an airway already diseased due to anthracosilicosis. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); Claimant's Exhibit 9.

Employer next argues that the testimony of Dr. Rashid that the miner's condition deteriorated due to Parkinson's disease conflicts with his subsequent reports and testimony wherein Dr. Rashid,

played down the severity of the miner's Parkinson's disease and stated that it was only mild. Dr. Rashid also agreed that the miner's death was actually caused by a pulmonary infection or pneumonia. His testimony that the miner's Parkinson's disease was mild and not severe enough to cause a swallowing problem is totally inconsistent with the medical records from the hospital and the opinions of three (3) highly qualified pulmonary specialists who reviewed the miner's records and found the same indication that the miner indeed was having a problem swallowing due to his Parkinson's disease at the time of his death.

Employer's Brief at 4-5. Dr. Rashid, the miner's treating physician, opined that at the time of the miner's hospitalization which ended in his demise, the miner had symptoms and signs of emphysema and a pulmonary infection due to underlying silicosis. Dr. Rashid indicated that the cause of the miner's death was pulmonary infection, pneumonia, bronchitis, and emphysema resulting from his occupationally-related anthracosilicosis. Director's Exhibit 3; Claimant's Exhibit 10.

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<sup>4</sup>Dr. Simelaro opined that the miner's anthracosilicosis played a significant role in his total respiratory disease which substantially caused his death and that anthracosilicosis was a significant factor leading to death. He also opined that the miner's "airway was grossly diseased from anthracosilicosis and cigarette smoking. So, if he did aspirated (sic) due to Parkinsonism, matters would have been worse... Parkinsonism may have caused aspiration into an already diseased airway from anthracosilicosis." Claimant's Exhibit 9.

Contrary to employer's assertion, Dr. Rashid's opinion that the miner's condition had deteriorated at the time of his final illness does not conflict with his opinion that the miner's Parkinson's disease was not severe enough to cause any swallowing problem. Director's Exhibit 3; Claimant's Exhibit 9 at 13. Dr. Rashid explained that a physician's assistant noted the miner's complaint of "difficulty swallowing" in the "History" section of the Discharge Summary regarding the miner's final hospitalization, and further explained that the miner had become very weak. *Id.* at 18-19. Critical to the issue *sub judice*, Dr. Rashid testified that the miner's difficulty swallowing did not cause his death and that the miner's occupationally-related chronic obstructive pulmonary disease made him susceptible to the pneumonia he contracted which led to his death. *Id.* at 11-12, 22-24. Moreover, the fact that the record contains contrary opinions does not render Dr. Rashid's opinion unreasoned.<sup>5</sup> The administrative law judge properly credited Dr. Rashid's findings in the instant case. Specifically, the administrative law judge noted that Dr. Rashid was the miner's treating physician for over ten years and his opinions were based on years of treatment and personal knowledge regarding the progression of both the miner's pneumoconiosis and Parkinson's disease. *Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-215 (3d Cir. 1997); *see also Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997).

Lastly, employer's assertion that, "A complete review of the record leads to one conclusion: coal workers' pneumoconiosis did not cause, hasten or in any way contribute to the death of [the miner]," Employer's Brief at 6, is tantamount to a request that the Board reach that conclusion. However, the Board is not empowered to reweigh the medical evidence or to substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

Inasmuch as substantial evidence supports the administrative law judge's finding that claimant has met her burden to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death under Section 718.205(c)(2), we affirm that finding. Consequently, we further affirm the administrative law judge's award of survivor's benefits in the instant case. See

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<sup>5</sup>Employer's assertion that the administrative law judge ignored the evidence relevant to the miner's final hospitalization is refuted by the record. Decision and Order at 4-7.

*Lukosevicz, supra.*

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits is affirmed.

SO ORDERED.

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JAMES F. BROWN  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge