

BRB No. 07-1023 BLA

G.A.R.)
(Widow of E.R.))
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 Claimant-Petitioner)
)
 v.)
)
 FLEETWOOD COAL COMPANY) DATE ISSUED: 08/26/2008
)
 and)
)
 OLD REPUBLIC INSURANCE COMPANY)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Richard T. Stansell-Gamm,
Administrative Law Judge, United States Department of Labor.

G.A.R., Coeburn, Virginia, *pro se*.¹

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for
employer /carrier.

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

¹ Jerry Murphree, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Murphree is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

PER CURIAM:

Claimant,² without the assistance of counsel, appeals the Decision and Order (06-BLA-5351) of Administrative Law Judge Richard T. Stansell-Gamm 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). This case involves a survivor's claim filed on November 8, 2004.³ After noting that the parties stipulated that the miner suffered from pneumoconiosis arising out of his coal mine employment, the administrative law judge found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

Because this survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *See* 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence establishes that pneumoconiosis was the cause of the miner's death, or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or that the miner suffered from complicated pneumoconiosis, thereby entitling claimant to the irrebuttable presumption that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c)(1)-(4).

² Claimant is the surviving spouse of the deceased miner, who died on May 6, 2004. Director's Exhibit 8.

³ The miner filed claims for benefits on July 21, 1970 and June 6, 1984, each of which was finally denied. *See* Director's Exhibit 1. Although the miner filed a third claim on June 21, 1993, he subsequently withdrew that claim on September 30, 1993. *Id.*

Pneumoconiosis is a “substantially contributing cause” of a miner’s death if it hastens the miner’s death. 20 C.F.R. §718.205(c)(5); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992).

The administrative law judge initially addressed whether the evidence established that pneumoconiosis was the cause of the miner’s death pursuant to 20 C.F.R. §718.205(c)(1). The administrative law judge noted that Dr. Fleenor, the miner’s treating physician, was the only physician to attribute the miner’s death directly to his pneumoconiosis.⁴ Decision and Order at 14; Director’s Exhibits 8, 26. Section 718.104(d) provides that the weight given to the opinion of a treating physician shall “be based on the credibility of the physician’s opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole.” 20 C.F.R. §718.104(d)(5); *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 535, 21 BLR 2-323, 2-340 (4th Cir. 1998). In this case, the administrative law judge found that Dr. Fleenor did not offer any explanation for his opinion that the miner’s pneumoconiosis was the cause of his death.⁵ Decision and Order at 8. Substantial evidence supports this finding. The administrative law judge, therefore, permissibly determined that Dr. Fleenor’s opinion was not sufficiently reasoned.⁶ *Id.*; *see Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186,

⁴ Dr. Fleenor completed the miner’s death certificate. Dr. Fleenor attributed the miner’s death to “Black Lung.” Director’s Exhibit 8. Dr. Fleenor listed pneumonia as a significant condition contributing to the miner’s death. *Id.* In an April 22, 2005 letter, Dr. Fleenor opined that the miner died “due to ventilatory failure as a result of [c]oal [w]orkers’ pneumoconiosis or [b]lack [l]ung.” Director’s Exhibit 26. Dr. Fleenor noted that the miner “died at age 67, which is quite young in this day and time.” *Id.* Dr. Fleenor stated that, if the miner had not suffered from black lung, “he could have reasonably expected to live several years further.” *Id.*

⁵ The record reflects that Dr. Fleenor provided no explanation for his findings on the miner’s death certificate. Director’s Exhibit 8. Dr. Fleenor similarly provided no explanation for his opinion, in an April 22, 2005 supplemental letter, that the miner died due to ventilatory failure as a result of coal workers’ pneumoconiosis. Director’s Exhibit 26. Although Dr. Fleenor based his opinion, in part, upon the fact that the miner died at the relatively early age of sixty-seven, the administrative law judge found that the doctor did not explain why the miner’s early death prompted him to identify pneumoconiosis, rather than emphysema, as the cause of the miner’s death. Decision and Order at 14.

⁶ The administrative law judge also questioned the adequacy of the documentation underlying Dr. Fleenor’s opinion, noting that Dr. Fleenor was not aware of the miner’s postmortem lung resection results, which revealed severe emphysema and only mild coal workers’ pneumoconiosis. Decision and Order at 14. The administrative law judge

192, 22 BLR 2-251, 2-263 (4th Cir. 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). We, therefore, affirm the administrative law judge's finding that the evidence did not establish that pneumoconiosis caused the miner's death pursuant to 20 C.F.R. §718.205(c)(1).

The administrative law judge also considered whether the evidence established that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death pursuant to 20 C.F.R. §718.205(c)(2). The administrative law judge credited the opinions of Drs. Tomashefski and Crouch, that the miner's pneumoconiosis was too mild to have contributed to, or hastened his death⁷ over Dr. Fleenor's contrary opinion,⁸ because he found that their opinions were based upon more extensive documentation. Decision and Order at 15. In weighing medical reports, an administrative law judge may properly find that a doctor's opinion based on limited clinical data is entitled to less weight than conflicting reports based upon more comprehensive documentation. See *Sabett v. Director, OWCP*, 7 BLR 1-299 (1984); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The administrative law judge noted that, unlike Dr. Fleenor, Drs. Tomashefski and Crouch reviewed the miner's

found that Dr. Fleenor's failure to account for the miner's severe emphysema undermined his opinion regarding the cause of he miner's death. *Id.*

⁷ Dr. Tomashefski reviewed the medical evidence, including the miner's postmortem lung resection slides. In a report dated September 1, 2005, Dr. Tomashefski opined that the miner's death was due to respiratory failure due to end-stage emphysema. Director's Exhibit 27. Dr. Tomashefski also opined that the miner's thromboemboli and bronchopneumonia were contributory causes of death. *Id.* Dr. Tomashefski opined that the miner's coal workers' pneumoconiosis was too mild to have been a cause of, or a contributory factor in, his death. *Id.* Dr. Tomashefski reiterated his opinions during an August 30, 2006 deposition. Employer's Exhibit 3. Dr. Crouch reviewed the miner's postmortem lung slides. In a report dated April 4, 2006, Dr. Crouch diagnosed simple mild coal workers' pneumoconiosis, severe emphysema, focal acute bronchopneumonia, and a recent thromboembolus. Employer's Exhibit 1. Dr. Crouch further opined that "the coal dust related changes are too mild to have caused any clinically significant degree of respiratory impairment and could not have caused, contributed to, or otherwise hastened this patient's death." *Id.*

⁸ As previously noted, Dr. Fleenor opined that the miner would have lived for several additional years if he had not suffered from coal workers' pneumoconiosis. Director's Exhibit 26.

postmortem lung tissue slides,⁹ revealing only “minimal” coal workers’ pneumoconiosis. Decision and Order at 14. Because he found that their opinions were well reasoned and based upon more comprehensive documentation, the administrative law judge properly accorded greater weight to the opinions of Drs. Tomashefski and Crouch. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). Because it is supported by substantial evidence, we affirm the administrative law judge’s finding that the evidence did not establish that that miner’s pneumoconiosis was a substantially contributing cause or factor leading to his death pursuant to 20 C.F.R. §718.205(c)(2).

Further, because there is no evidence in the record supportive of a finding of complicated pneumoconiosis, the administrative law judge properly found that claimant was precluded from establishing entitlement based on the irrebuttable presumption of death due to pneumoconiosis set forth at 20 C.F.R. §718.304. Decision and Order at 13; *see* 20 C.F.R. §718.205(c)(3).

Based on the foregoing, we affirm the administrative law judge’s finding that the evidence did not establish that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

⁹ Dr. Colquitt conducted a postmortem resection of lung tissue on May 7, 2004. In a report dated June 11, 2004, Dr. Colquitt noted that his findings on gross examination were compatible with a diagnosis of simple coal workers’ pneumoconiosis. Director’s Exhibit 10. Dr. Colquitt also diagnosed, *inter alia*, panacinar and bullous emphysematous change, mild bronchopneumonia, and pulmonary thrombi. *Id.*

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge