

BRB No. 98-1601 BLA

MARY AKERS)	
(Widow of JOHN AKERS))	
)	
Claimant-Respondent)	
)	
v.)	
)	
DRUMMOND COMPANY, INC.)	DATE ISSUED: <u>8/26/99</u>
)	
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 Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Michael E. Bevers (Nakamura & Quinn LLP), Birmingham, Alabama, for claimant.

Laura A. Woodruff (Maynard, Cooper & Gale, P.C.), Birmingham, Alabama, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (97-BLA-0901) of Administrative Law Judge Gerald M. Tierney awarding benefits on 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 found, and the parties stipulated to, at least thirty years of coal mine employment and the

existence of pneumoconiosis arising out of coal mine employment. Director's Exhibit 19. Considering entitlement pursuant to the provisions of 20 C.F.R. Part 718,¹ the administrative law judge concluded that the evidence of record was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were awarded. On appeal, employer contends that the administrative law judge erred in weighing the medical opinion evidence pursuant to Section 718.205. Claimant responds, asserting that substantial evidence supports the award of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate in this 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 into the Act 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 pursuant to 20 C.F.R. Part 718 on a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 725.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The United States Court of Appeals for the Eleventh Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis will be considered a substantially contributing cause of death when it actually hastens the miner's death. See *Bradberry v. Director, OWCP*, 117 F.3d 1361, 21 BLR 2-166 (11th Cir. 1997).

¹The miner died on April 18, 1996. Director's Exhibit 4. Claimant, the miner's surviving spouse, filed her survivor's claim, the subject of the instant appeal, on May 13, 1996. Director's Exhibit 1.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Initially, employer's contention that the administrative law judge's Decision and Order fails to comport with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), is without merit.² The administrative law judge fully discussed the relevant evidence of record and his reasoning is readily ascertainable from his discussion of the evidence.

²The Administrative Procedure Act requires each adjudicatory decision to include a statement of "findings and conclusions, and the reasons or basis therefore, on all material issues of fact, law or discretion presented on the record..." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a).

With respect to the merits, the administrative law judge, in this instance, rationally found that the evidence of record was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). See *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). Employer contends that the administrative law judge erred in according greater weight to the opinion of Dr. Padove than to the opinions of Drs. Russakoff, Goldstein and Branscomb.³ We do not find merit in employer's argument. Employer's contention constitutes a request that the Board reweigh the evidence, which is beyond the scope of the Board's powers. See *Anderson v. Valley Camp Coal Company*, 12 BLR 1-111 (1988). In the instant case, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Padove, claimant's treating physician, over the opinions of Drs. Russakoff, Goldstein and Branscomb, and rationally found that the physician's opinion was sufficient to establish that pneumoconiosis was a substantially contributing factor leading to the miner's death. See 20 C.F.R. §718.205; *Bradberry, supra*; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Piccin, supra*; Decision and Order at 7-9. Contrary to employer's assertion, the administrative law judge considered the opinions of Drs. Russakoff, Goldstein and Branscomb, but acted within his discretion in concluding that the opinion of Dr. Padove was entitled to more weight inasmuch as he was claimant's treating physician for an eleven year span, in light of the physician's credentials and as his opinion was more thoroughly explained and well reasoned. See *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic*

³The relevant evidence of record consists of four medical opinions and the death certificate. The death certificate, signed by Dr. Perrine, listed the cause of death as esophageal cancer. Director's Exhibit 4. Dr. Padove, who treated the miner from 1985 through 1996 and is Board-certified in critical medicine, sleep medicine and internal medicine with a pulmonary subspecialty, opined that the miner's coal workers' pneumoconiosis contributed to his death by escalating his respiratory problems that damaged and weakened his lungs and that the miner's diminished lung function contributed to and hastened his death by impairing his ability to successfully combat the esophageal cancer. Director's Exhibits 5, 10; Claimant's Exhibit 1. Dr. Russakoff opined that the miner's death was due to esophageal cancer with widespread metastases which was not caused by his pneumoconiosis nor did pneumoconiosis contribute to or hasten his death. Employer's Exhibit 1. Dr. Branscomb opined that coal workers' pneumoconiosis did not play any role whatsoever in the miner's final illness or death and that the miner would have died at the same time and in the same way if he had never been in a mine and never had coal workers' pneumoconiosis. Director's Exhibit 15. Dr. Goldstein opined that the miner's death was caused by metastatic carcinoma of the esophagus which had nothing to do with coal dust exposure. Director's Exhibit 15.

v. Director, OWCP, 8 BLR 1-46 (1985); *Piccin, supra*; Decision and Order at 8. The administrative law judge is empowered to weigh the medical opinion evidence of record and to draw his own inferences therefrom, see *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See *Clark, supra*; *Anderson, supra*; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, as the administrative law judge permissibly relied on Dr. Padove's opinion to find that the miner's pneumoconiosis was a contributing cause to his death, we affirm the administrative law judge's award of benefits in this survivor's claim as it is supported by substantial evidence and is in accordance with law. *Bradberry, supra*; *Neeley, supra*; *Trumbo, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge