

BRB No. 00-0163 BLA

ADA TAYLOR	)	
(Widow of LAWRENCE TAYLOR)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GREAT WESTERN COAL, INC.	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Sidney B. Douglass, Harlan, Kentucky, for claimant.

Denise M. Davidson (Barrett, Haynes, May, Carter & Rourke, P.S.C.), Hazard, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order- Denying Benefits (98-BLA-1316) of Administrative Law Judge Joseph E. Kane 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,

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<sup>1</sup> Claimant is Ada Taylor, surviving spouse of the miner, Lawrence Taylor, who died on September 26, 1996. Director's Exhibit 5. Claimant filed her survivor's claim with the Department of Labor on July 25, 1997. Director's Exhibit 1.

30 U.S.C. §901 *et seq.* The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(2), (4), 718.203, but insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's determination that the weight of the evidence was insufficient to establish that pneumoconiosis was a substantial contributing cause of the miner's death pursuant to Section 718.205(c). Employer, in response, asserts that the administrative law judge's findings are supported by substantial evidence, and urges affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a brief in the instant case.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on a survivor's claim filed on or after January 1, 1982, only where the miner's death was due to pneumoconiosis, where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, where death was caused by complications of pneumoconiosis, or where complicated pneumoconiosis is established, and the evidence establishes the existence of pneumoconiosis arising out of coal mine employment. *See* 20 C.F.R. §§718.1, 718.202(a), 718.203, 718.205(c)(1)-(3); *Trumbo v. Reading Anthracite Coal Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause or factor leading to the miner's death if it serves to hasten that death in any way. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

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<sup>2</sup> We affirm, as unchallenged on appeal, the administrative law judge's finding that the evidence establishes at least 24 years of qualifying coal mine employment, that employer is properly designated as the putative responsible operator, and that the evidence establishes the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(2), (4) and 718.203(b). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant challenges the administrative law judge's finding that the weight of the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Specifically, claimant asserts that the most probative medical opinions of record are those provided by Dr. Moore, a Board-certified internist who treated the miner during his final illness, by Dr. Bathija, the autopsy prosector, and by Dr. Perper, who evaluated the miner's condition for the Department of Labor, as they are supported by the miner's lengthy coal mine employment history, his years of breathing difficulty, and his demise in the hospital from heart and lung failure. Claimant maintains that because the contrary consultative opinions of Drs. Naeye and Caffrey are adversarial, they are not as reliable. Claimant's arguments are tantamount to a request to reweigh the evidence, which is beyond the Board's scope of review. *See O'Keefe, supra*. Moreover, inasmuch as there is no evidence in the record of either bias or partiality on the part of the physicians who rendered opinions herein, the administrative law judge properly neither credited nor discounted the conflicting medical opinions on that basis alone. *See generally Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*). The administrative law judge accurately reviewed the medical opinions of record and the qualifications of the physicians, and determined that Dr. Moore only treated the miner on one occasion, did not have access to the miner's medical records, and relied on a history of pneumoconiosis as related by the miner and his wife. Decision and Order at 8, 9, 17; Director's Exhibits 5, 9, 23. Although Dr. Moore opined that pneumoconiosis significantly contributed to the miner's death, the administrative law judge determined that Dr. Moore initially failed to list pneumonia as a terminal event, contrary to the opinions of all pathologists of record, but instead believed that the immediate cause of death was a myocardial infarction, a finding not shared by the autopsy prosector. In view of Dr. Moore's limited knowledge of the miner and comparative lack of relevant qualifications to assess the cause of death, as well as the physician's failure to explain how the underlying data supported his conclusion that pneumoconiosis contributed to the miner's death by increasing the stress on his heart, the administrative law judge permissibly discounted Dr. Moore's opinion. Decision and Order at 17; *see generally Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983). The administrative law judge acknowledged that, while Dr. Bathija's opinion would ordinarily be entitled to great weight because of his status as autopsy prosector and his qualifications as a pathologist, the opinion did not constitute a well-reasoned diagnosis that pneumoconiosis hastened the miner's death because of the speculative, equivocal and generalized nature of Dr. Bathija's conclusions and the physician's testimony that he could not determine the precise cause of death due to the limited nature of the autopsy. Decision and Order at 9-11, 17-18; Director's Exhibits 6, 28.;

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3The administrative law judge noted that Dr. Bathija could not state with medical certainty that pneumoconiosis caused or contributed to death, but merely testified that simple pneumoconiosis was a probable contributing cause of death, or one of the factors "which probably hastened the death, which probably caused the death," Director's Exhibit 28 at 22. Decision and Order at 11.

*see generally Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5 (1985). Similarly, the administrative law judge permissibly discounted Dr. Perper's opinion that the miner's terminal bronchopneumonia was a complication of pneumoconiosis and/or that coronary artery disease and cardiomegaly made the miner more susceptible to pulmonary hypoxia caused by pneumoconiosis, as the administrative law judge found the opinion unsupported, speculative and based on generalities. Decision and Order at 18; Director's Exhibit 7; *see generally Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Justice, supra*; *Knizner, supra*. The administrative law judge acted within his discretion in crediting the contrary opinions of Drs. Naeye and Caffrey, that the miner's pneumoconiosis was too mild to have contributed in any way to his death from acute bronchopneumonia, and that pneumoconiosis did not predispose the miner to an increase of infections, as the administrative law judge found these opinions better explained and supported by the objective evidence of record. Decision and Order at 12-13, 18; Director's Exhibits 26, 29-31; *see Wetzel, supra*; *Lucostic, supra*.

Claimant additionally maintains that the opinions of Drs. Naeye and Caffrey are inconsistent with the Act and regulations because these physicians do not believe that simple pneumoconiosis by itself can cause a disabling pulmonary effect or hasten a miner's death. Claimant's arguments find no support in the record with regard to Dr. Naeye's opinion, *see* Director's Exhibits 26, 31, and although Dr. Caffrey's supplemental report of June 10, 1998, indicated that "there is no objective evidence in the recognized medical literature that simple coal workers' pneumoconiosis by itself contributes to or hastens a miner's death that I am aware of," Director's Exhibit 30, when this statement is viewed in context and in conjunction with Dr. Caffrey's earlier report of May 9, 1998, Director's Exhibit 29, Dr. Caffrey's overall opinion does not appear to be hostile to the Act; rather, the physician concluded that the mild degree of simple pneumoconiosis present in the miner did not hasten his death or contribute to or aggravate the conditions which caused his death. Decision and Order at 13; Director's Exhibits 29, 30. As it is claimant's burden to establish that the miner's pneumoconiosis was a substantial contributing cause of the miner's death pursuant to Section 718.205(c), *see Griffith, supra*; *Brown, supra*, and the administrative law judge's findings thereunder are supported by substantial evidence, we affirm his denial of benefits.

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

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<sup>4</sup>We reject claimant's assertion that Dr. Caffrey's statement that "it is quite possible or likely that [the miner] would have died at approximately the same time whether or not he was a coal miner..." Director's Exhibit 29, was speculative and should have been discounted by the administrative law judge, as a review of Dr. Caffrey's reports reveals that the physician unequivocally opined that pneumoconiosis did not cause, contribute to, or hasten the miner's death. Decision and Order at 13; Director's Exhibits 29, 30.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge