

BRB No. 00-0329 BLA

PHYLLIS J. YOUNG	)	
(Widow of LESTER J. YOUNG)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SEWELL COAL COMPANY	)	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 of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, 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 (97-BLA-1592) of Administrative Law Judge Jeffrey Tureck denying 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). This is the second time this case is before the Board. By decision and

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<sup>1</sup>Administrative Law Judge Daniel L. Leland, in a Decision and Order issued August

Order of August 26, 1999, the Board reversed the administrative law judge's finding that the doctrine of collateral estoppel is not applicable in the instant case, and held that employer is barred from relitigating the issue of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Additionally, the Board remanded the case to the administrative law judge to determine whether the relevant evidence of record is sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), including whether pneumoconiosis hastened, in any way, the miner's ultimate demise. *Young v. Sewell Coal Co.*, BRB No. 98-1000BLA (Aug. 26, 1999)(unpublished). On remand, the administrative law judge found that claimant failed 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 denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief in this appeal.

The Board 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).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718 in a claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; *see 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). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*), held in *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993), that pneumoconiosis will be found to be a substantially contributing cause or factor in the miner's death where it is found to have actually hastened death.

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14, 1996, awarded benefits to the miner, Lester J. Young. Director's Exhibit 29. The Board affirmed this decision. *Young v. Sewell Coal Co.*, BRB No. 96-1628 BLA (July 18, 1997)(unpublished). No further appeal was taken. The miner died on September 27, 1995. Director's Exhibit 8. Claimant, widow of the miner, filed this survivor's claim on September 19, 1996. Director's Exhibit 1.

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718. Contrary to claimant's assertion, the administrative law judge, within a proper exercise of his discretion, discredited the opinions of Drs. Wisman and Ranavaya because they did not provide a rationale for their conclusion that pneumoconiosis caused the miner's death. Decision and Order at 2-3; Director's Exhibits 8, 22, 25; *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2- (4th Cir. 2000); *Clark v. Karsts-Robbins Coal Co.*, 12 BLA 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). The administrative law judge correctly found that Dr. Wisman merely listed pneumoconiosis in the miner's death certificate as a significant condition contributing to death. Decision and Order at 2; Director's Exhibit 8. The administrative law judge properly found that Dr. Wisman, in his March 3, 1997 report, stated that pneumoconiosis was a major contributing factor to the miner's death as corroborated by the autopsy report, but offered no explanation for his conclusion. Decision and Order at 2; Director's Exhibit 22. Further, the administrative law judge properly found that the autopsy report did not "state or imply" that pneumoconiosis contributed to the miner's death. Decision and Order at 2; Director's Exhibit 9. Similarly, the administrative law judge rationally found that Dr. Ranvaya listed the medical records that he reviewed but failed to provide any explanation for his diagnosis that pneumoconiosis, in addition to carcinoma of the lung, coronary artery disease and cardiomegaly, "led to the miner's death." Decision and Order at 2; Director's Exhibit 25. Inasmuch as the administrative law judge rationally found no credible evidence that would support claimant's burden of establishing that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or that the miner's death was caused by complications of pneumoconiosis, we must affirm the denial of benefits. 20 C.F.R. §718.205(c). *See Sparks, supra; Shuff, supra.*

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<sup>2</sup>The death certificate, signed by Dr. Wisman, lists the immediate cause of the miner's death as cancer of the lung, with coal workers' pneumoconiosis as "[o]ther significant conditions contributing to death but not resulting in the underlying cause." Director's Exhibit 8.

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

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