

BRB No. 04-0891 BLA

PAULINE PLEWA)
(Widow of JOHN F. PLEWA))
)
 Claimant-Petitioner)
)
 v.)
)
 BETHENERGY MINES, INCORPORATED)
) DATE ISSUED: 05/31/2005
 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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Blair W. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose, L.L.C.), Johnstown, Pennsylvania, for employer/carrier.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (2003-BLA-5511) of Administrative Law Judge Daniel L. Leland denying benefits on a survivor's claim filed pursuant to the

¹ Claimant is Pauline Plewa, the widow of John F. Plewa, the miner, who died on February 26, 2001. Director's Exhibit 9.

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 noted that the miner had worked for forty-three years in coal mine employment and that the only issue in this case is the cause of the miner's death. The administrative law judge found the evidence 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 asserts that the administrative law judge did not provide valid reasons for either rejecting the evidence she submitted or for according greater weight to the evidence submitted by employer. Employer responds, asserting that the administrative law judge has properly weighed the evidence regarding the cause of the miner's death and urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not submitted a brief in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe 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 in 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. 20 C.F.R. §718.205(c). See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Sumner v. Blue Diamond Coal Co.*, 12 BLR 1-74 (1988); *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 a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. See 20 C.F.R. §718.205(c)(5); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

After consideration of the administrative law judge's Decision and Order, the arguments of the parties, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error.

On appeal, claimant asserts that the administrative law judge failed to provide rational explanations for rejecting the opinion of Dr. Perper. Claimant also argues that

the administrative law judge gave no valid reason for finding the opinions of Drs. Bush, Pietrogallo, and Fino to be persuasive. After considering the evidence relevant to Section 718.205(c), the administrative law judge accorded greater weight to the opinions of Drs. Bush, Pietrogallo, and Fino, than to the contrary opinion of Dr. Perper, and therefore concluded that pneumoconiosis was not a substantially contributing cause of the miner's death.² Decision and Order at 4. The administrative law judge also found that the evidence failed to support a finding that pneumoconiosis hastened the miner's death.

We affirm the administrative law judge's finding that the evidence failed to establish that pneumoconiosis was a substantially contributing cause of the miner's death, as it is rational and supported by substantial evidence. The administrative law judge acted within his discretion in determining that the report of Dr. Perper, the only opinion that arguably supports a finding that pneumoconiosis contributed to the miner's death, was entitled to little weight. Decision and Order at 4. The administrative law judge permissibly concluded that Dr. Perper's opinion was poorly reasoned and unsupported because the physician failed to provide a comprehensive explanation for his conclusion that the miner had hypoxemia, in light of the lack of blood gas study evidence in the record supportive of this diagnosis, which the physician acknowledged. Decision and Order at 4, Director's Exhibit; Claimant's Exhibit 1. Although the administrative law judge recognized that Dr. Perper also relied on the severity of the miner's pneumoconiosis, his use of supplemental oxygen, and the presence of a pulmonary embolism, the administrative law judge rationally determined that Dr. Perper did not adequately explain how these factors supported his theory as to the cause of the miner's death. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985).

In addition, there is no merit to claimant's suggestion that the denial of benefits must be vacated because the opinions of the physicians who opined that the miner's death

² Dr. Perper, who is Board-certified in Anatomic, Surgical, and Forensic Pathology, opined that the miner had simple coal workers' pneumoconiosis, and associated centrilobular emphysema, resulting from his occupational exposure to coal mine dust, which contributed significantly to his death. Director's Exhibit 11; Claimant's Exhibit 1. The administrative law judge noted that Dr. Perper stated that the miner's pneumoconiosis and associated centrilobular emphysema caused hypoxemia which resulted in a fatal cardiac arrhythmia. Decision and Order at 4; Director's Exhibit 11; Claimant's Exhibit 1. Drs. Bush, Pietrogallo, and Fino found that the miner died due to complications of colon cancer. Decision and Order at 3-4; Director's Exhibit 12; Employer's Exhibits 2-6.

was not due to pneumoconiosis are not well reasoned. Since the administrative law judge reasonably found that the only medical evidence that could arguably support claimant's burden does not do so, claimant has failed to carry her burden of establishing that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c); *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994). The adequacy of the contrary medical opinions is, therefore, irrelevant. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1983).

The administrative law judge is empowered to weigh the medical evidence 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. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). In this case, contrary to claimant's contentions, the administrative law judge considered and weighed all the relevant evidence of record. His findings are reasonable, supported by the record, and in accordance with law. Consequently, we affirm the administrative law judge's finding that the evidence failed to establish that the miner's death was due to pneumoconiosis. *Lukosevicz*, 888 F.2d at 1003, 13 BLR at 2-103. Moreover, as claimant has failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), claimant cannot establish her entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718. *See Trumbo*, 17 BLR at 1-87.

Accordingly, the administrative law judge's Decision and Order Denying Benefits in this survivor's claim is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge