

BRB No. 07-0344 BLA

R.R.)
(Widow of R.R.))
)
Claimant-Respondent) DATE ISSUED: 12/13/2007
)
v.)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Petitioner) DECISION and ORDER

Appeal of Decision and Order of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Barry H. Joyner (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order—Awarding Benefits (2006-BLA-5128) of Administrative Law Judge Michael P. Lesniak on a survivor's claim¹ filed pursuant to the provisions of the 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 accepted the parties' stipulations, that the miner had been receiving lifetime black lung benefits and had pneumoconiosis arising from coal mine employment, and adjudicated the remaining issue of whether the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Decision

¹ Claimant is the widow of the miner, who died on November 18, 2004. Director's Exhibit 9. Claimant filed her survivor's claim on December 21, 2004. Director's Exhibit 3.

and Order at 2. The administrative law judge found that the miner's medical records provided little insight into his condition shortly before death, and that the death certificate, signed by Dr. Zdunek, did not indicate that pneumoconiosis played a role in the miner's death. Decision and Order at 5. However, the administrative law judge found that Dr. Zdunek's July 27, 2006 report provided a nexus between the miner's pneumoconiosis and his death, and that this report was sufficiently reasoned. Decision and Order at 5. With no contrary reports in the record, the administrative law judge found that the claimant had met her burden of proving that coal workers' pneumoconiosis contributed to the miner's death pursuant to 20 C.F.R. §718.205(c), and was entitled to survivor's benefits. Decision and Order at 5.

On appeal, the Director contends that the administrative law judge erred in finding that claimant met her burden of proving that the miner's death was caused by pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The claimant has not submitted a response.

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.² 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 survivor's benefits in a claim filed on or 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. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The miner's death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, if it was a substantially contributing cause or factor leading to the miner's death, if death was caused by complications of pneumoconiosis, or if the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a "substantially contributing cause" of death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

² The law of the United States Court of Appeals for the Third Circuit is applicable, as the miner was employed in the coal mining industry in Pennsylvania. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 5.

The Director contends that Dr. Zdunek's opinion is insufficiently reasoned and documented to support a finding of death due to pneumoconiosis at Section 718.205(c). We agree. Dr. Zdunek, the miner's treating physician for nineteen years, signed the miner's death certificate on November 18, 2004, indicating that the immediate cause of death was "hepatoma, due to (or as a condition of), chronic cirrhosis, due to hemachromatosis." Director's Exhibit 9. At the hearing on July 27, 2006, claimant submitted Dr. Zdunek's letter to her of the same date, that reads in full:

Mr. [R] was a [p]atient of mine who apparently had a diagnosis of black lung. Mr. [R] passed away from a primary hepatoma of the liver. In Mr. [R's] final weeks he suffered from significant and severe ascites which compressed his diaphragm and resulted in increased difficulties breathing. He required oxygen for breathing and comfort. His suffering and eventual demise although from the hepatoma of the liver was aggravated and exacerbated by his black lung. The resulting pleural effusions and ascites aggravated his already diminished lung function and hastened his demise. Hopefully, this information can be of benefit to you.

Claimant's Exhibit 2.

Dr. Zdunek offered no explanation for the difference between his conclusions on the death certificate and those in his letter, and cites no specific documentation for his opinion that pneumoconiosis hastened the miner's death. *Id.* Further, Dr. Zdunek's statement that the miner "apparently had a diagnosis of black lung" shows that the physician lacked personal knowledge that the miner suffered from the disease. *Id.* While Dr. Zdunek's medical records reflect treatment for the miner's liver cancer, cirrhosis, and hemachromatosis, as well as for coronary artery disease, stent placement, and cholesterol, the Director correctly notes that they do not reflect a diagnosis of, or treatment for, pneumoconiosis or any other chronic respiratory impairment. Director's Exhibit 12. Rather, Dr. Zudnek's progress notes regularly indicated that the miner's lungs were clear and his chest was normal until ascites from the hepatoma caused shortness of breath and difficulties breathing. *Id.*

The mere statement of a conclusion by a physician, without any explanation of the basis for that statement, does not take the place of the required reasoning. *See Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). Because Dr. Zudnek's conclusory and unsupported letter of July 27, 2006 lacks the minimal requirements for reliability, we hold that it is insufficient, as a matter of law, to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *Id.*; *see also Lukosevic*, 888 F.2d 1001, 13 BLR 2-100. Consequently, we reverse the administrative law judge's award of benefits.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is reversed.

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge