

BRB No. 99-0290 BLA

CAROL A. KNUCKLES)	
(Widow of BILLY R. KNUCKLES))	
)	
Respondent)	
Claimant-)	
)	
v.)	
)	
U.S. STEEL MINING COMPANY)	DATE ISSUED:
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT OF)	
LABOR)	DECISION AND ORDER

Party-in-Interest

Appeal of the Decision and Order-Award of Survivor's Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garton & Hayes), Bluefield, West Virginia, for claimant.

Howard Salisbury, Jr. (Kay, Casto and Chaney, PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order - Award of Survivor's Benefits (97-BLA-1761) of Administrative Law Judge Richard T. Stansell-Gamm on a 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).¹ Based on the date of filing of this claim, September 23, 1996, the administrative law judge considered the claim under the regulations set forth in 20 C.F.R. Part 718. Director's Exhibit 1. The administrative law judge found that claimant is an eligible survivor under the Act and that the miner had suffered from pneumoconiosis arising out of coal mine employment. After consideration of the record, the administrative law judge found the evidence insufficient to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(1) and (c)(3). However, the administrative law judge found that the preponderance of the evidence, as supported by the reasoned opinions of Drs. Argenta and Gaziano, establishes that pneumoconiosis hastened the miner's death pursuant to 20 C.F.R. §718.205(c)(2) in accordance with the decision of the United States Court of Appeals for the Fourth Circuit in *Shuff v. Cedar Coal Co.*, 969 F.2d 977, 16 BLR 2 - 90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).² Accordingly, benefits were awarded and the administrative law judge ordered employer to pay survivor's benefits to claimant commencing September 1, 1996. On appeal, employer contends that the administrative law judge should have accorded determinative weight to Dr. Castle's opinion that pneumoconiosis was not a factor in the miner's death, and should have accorded less weight to Dr. Argenta's opinion.³ Claimant responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has indicated that he will not participate in this appeal.

¹Claimant is the surviving spouse of the miner, Billy R. Knuckles, who died on September 11, 1996. Director's Exhibit 4. The miner filed claims for benefits on April 11, 1986, August 23, 1989, and September 4, 1991. Director's Exhibit 28. All three claims were denied for failure to establish any element of entitlement, and the miner never requested reconsideration or a formal hearing before an administrative law judge. The miner filed a fourth claim on August 10, 1993. After an initial denial by the district director, the case was forwarded to the Office of Administrative Law Judges for a formal hearing. At the formal hearing, the parties stipulated to the presence of pneumoconiosis and twenty-three years of coal mine employment. After consideration of the medical evidence, the administrative law judge determined that the miner had established entitlement to benefits. Director's Exhibit 28.

²This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner's coal mine employment occurred in West Virginia. Director's Exhibit 28; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

³The administrative law judge's findings pursuant to 20 C.F.R. §718.205(c)(1) and (c)(3) are unchallenged on appeal and are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 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 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 has held that evidence demonstrating that pneumoconiosis hastened the miner's death establishes that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to Section 718.205(c)(2). See *Shuff, supra*.

In determining whether pneumoconiosis hastened the miner's death, the administrative law judge considered the death certificate and death summary, and medical opinions by Drs. Qazi, Castle, Gaziano, and Argenta. Initially, the administrative law judge assigned the least value to the death certificate signed by Dr. Tambirella because the physician did not indicate which data he relied upon in making his determination that the miner died from sepsis caused by pneumonia and aspiration. Director's Exhibit 4; Decision and Order at 13. The administrative law judge next discounted Dr. Qazi's conclusion that pneumoconiosis contributed to the miner's death because, of the four physicians providing an opinion on the cause of death, Dr. Qazi's was the least documented, and the physician admitted in his deposition that he could not support his conclusion based on the medical data developed during the miner's hospitalization at Princeton Community Hospital. Director's Exhibit 15; Employer's Exhibit 2; Decision and Order at 13. The administrative law judge then considered the death summary, which included chronic obstructive pulmonary disease as a cause of death. The administrative law judge found that the physician who authored the death summary was not identified and thus, that he could not ascertain the qualifications of that physician. Furthermore, the administrative law judge found that the death summary listed "COPD" as a cause of death without an explanation, and thus, was not a well-reasoned document. These findings by the administrative law judge are unchallenged on appeal and are therefore affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The administrative law judge next considered the opinion of Dr. Castle, who is Board-certified in pulmonary disease and internal medicine. Dr. Castle based his opinion on a

review of the record, and opined that pneumoconiosis was not a factor in the miner's death. Employer's Exhibit 3. The administrative law judge found that the physician's opinion was entitled to less probative weight than the opinions of Drs. Gaziano and Argenta because Dr. Castle did not make a "definitive statement on whether Mr. Knuckles had pneumoconiosis" and because "it is not clear whether Dr. Castle reached his final conclusion on the basis that Mr. Knuckles did not have pneumoconiosis or that Mr. Knuckles had pneumoconiosis but it was not a factor in his death." Decision and Order at 13 - 14. The administrative law judge then found that Dr. Gaziano, "a well qualified pulmonary specialist, provided a well documented and reasoned assessment concerning the role pneumoconiosis had in Mr. Knuckles' death. His one line summary explains how he reached his conclusion that pneumoconiosis contributed to the end of Mr. Knuckles' life." Decision and Order at 14; Director's Exhibit 25. The administrative law judge next found that Dr. Argenta, a plastic surgeon, was a highly qualified doctor who was the miner's treating physician at the time of his death, and had "an excellent opportunity to develop the best documented opinion on the factors leading to death." The administrative law judge further found Dr. Argenta's explanation of the relationship between the miner's chronic obstructive pulmonary disease and his death to be "exceptionally well reasoned" and his conclusions about the health factors and events leading the miner's death most consistent with the objective medical evidence in the record. The administrative law judge thus found that the "combined evidentiary weight of Dr. Gaziano's opinion and Dr. Argenta's most probative conclusion outweighs Dr. Castle's assessment on the issue" and that the evidence therefore supports a finding that pneumoconiosis hastened the miner's death. Decision and Order at 14.

Employer argues that the administrative law judge should have credited the opinion of Dr. Castle, over the contrary opinion of Dr. Argenta. Employer's Brief at 5. Employer contends that it is "sheer speculation at best for Dr. Argenta to opine that pneumoconiosis contributed to this miner's decidedly non-pulmonary death, within the meaning of the applicable statute and regulations." Employer's Brief at 6. After quoting Dr. Castle's opinion, employer argues that the record establishes that the miner's death was not caused in any way by pneumoconiosis. Employer's Brief at 8.

Contrary to employer's contention, the administrative law judge did not commit reversible error in determining that Dr. Argenta's opinion was a documented and reasoned opinion on the contributory role of pneumoconiosis in the miner's death. Dr. Argenta, a plastic and reconstructive surgeon who treated the miner for pressure sores in his final days, stated that the miner suffered from chronic obstructive pulmonary disease as a consequence of black lung disease along with multiple cerebrovascular accidents, diabetes mellitus, myocardial infarction and hypertension, and that black lung disease contributed to death. Director's Exhibits 20, 23. In his deposition on January 7, 1998, Dr. Argenta stated that one could not separate all of the miner's physical impairments, and that theoretically, one could say that the obstructive lung disease caused the cardiac stress which caused the myocardial infarction which caused the stroke that caused his death. Employer's Exhibit 1 at 24. Dr. Argenta specifically stated "When you have lung disease and pneumonia and alcoholism and

myocardial infarctions and hypertension and diabetes, all of this is related because it's all--the heart--the ability of the heart to pump after myocardial infarctions is not as good as it should be ... I think this man's whole body was so complicated and so debilitated, that I don't think you can put and say that number one was the major cause, number two was the secondary cause. This was really a total body failure." Employer's Exhibit at 13 - 14. Dr. Argenta further stated that "... with the history of lung disease and with a history of diabetes, which right away impairs his ability to heal or to get rid of infection, he's in big trouble." Employer's Exhibit 1 at 17. Dr. Argenta also stated that each of the conditions contributing to the miner's death, as listed in the death summary, including chronic obstructive pulmonary disease, was a materially contributing factor in the miner's death. Employer's Exhibit 1 at 29. The administrative law judge rationally found that Dr. Argenta's opinion should be credited because he was the miner's treating physician. See *Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989). Moreover, the administrative law judge permissibly found Dr. Argenta's opinion reasoned and documented. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). We additionally note that the administrative law judge permissibly found that Dr. Castle's opinion was outweighed by the opinions of Drs. Argenta and Gaziano because it was not clear whether the physician's conclusion that pneumoconiosis did not contribute to the miner's death was based on belief that the miner did not suffer from pneumoconiosis at all, or that pneumoconiosis was not a factor in his death. See *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986). As employer raises no other allegations of error, and the administrative law judge acted within his discretion in determining that Drs. Argenta and Gaziano provided the most reasoned opinions in light of the medical evidence in the record, we affirm his finding that pneumoconiosis hastened the miner's death. See *Shuff, supra*. 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. See *Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Inasmuch as the administrative law judge's findings are supported by substantial evidence, we affirm his determination pursuant to Section 718.205 (c)(2).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge