

BRB No. 99-0585 BLA

JOSEPHINE KODALA	)	
(Widow of EDWARD KODALA)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
VESTA MINING COMPANY	)	DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
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.

Debra Henry (United Mine Workers of America, District 12, Compensation Department), Belle Vernon, Pennsylvania, for claimant.

Christopher Pierson (Davis, McFarland & Carroll), Pittsburgh, Pennsylvania, 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 (98-BLA-0873) of Administrative Law Judge Daniel L. Leland awarding 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).<sup>1</sup> The administrative law judge found

---

<sup>1</sup> Claimant is the surviving widow of the miner, Edward Kodala, who died on January 19, 1997, Director's Exhibit 8. The miner had filed a claim which was ultimately denied on May 9, 1991 by Administrative Law Judge Clement J. Kichuk,

thirty-seven years and eight months of coal mine employment established and adjudicated the survivor's claim pursuant to 20 C.F.R. Part 718. The administrative law judge considered all of the relevant medical opinion evidence and found that death due to pneumoconiosis was established pursuant to 20 C.F.R. §718.205(c). Accordingly, survivor benefits were awarded. On appeal, employer contends that the administrative law judge erred in weighing the relevant medical opinion evidence and finding that death due to pneumoconiosis was established pursuant to Section 718.205(c). Claimant responds, urging that the administrative law judge's Decision and Order awarding survivor benefits be affirmed. The Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, has not responded to this appeal.

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

---

Director's Exhibit 43. No further action was taken on the miner's claim and it is not at issue herein. Subsequent to the miner's death, claimant filed a survivor's claim on March 3, 1997, Director's Exhibit 1.

In order to establish entitlement on the basis of this survivor's claim, which was filed after January 1, 1982, and in which the miner had not been awarded benefits prior to his death on a claim filed prior to January 1, 1982, see 30 U.S.C. §§901, 932(1); *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989), claimant must establish the existence of pneumoconiosis, see 20 C.F.R. §718.202; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988),<sup>2</sup> and that the miner's death was due to pneumoconiosis, see 20 C.F.R. §718.1; 718.205(c); *Neeley, supra*; cf. *Smith, supra*, which arose out of coal mine employment, see 20 C.F.R. §718.203; *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Moreover, the United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises, has held that, pursuant to Section 718.205(c)(2), pneumoconiosis substantially contributes to death if it hastens the miner's death, see *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

The administrative law judge considered all of the relevant medical opinion evidence.<sup>3</sup> Although the miner's death certificate listed pneumoconiosis as one of the immediate causes of the miner's death, the administrative law judge gave it little weight as the credentials of the physician who completed the certificate were not given and no basis for its conclusion was provided, see *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985), Decision and Order at 5. The administrative law judge also considered the opinion of the autopsy prosector, Dr. Zaglama, who diagnosed simple coal workers' pneumoconiosis which "may" have been a minor

---

<sup>2</sup> The presumptions at Section 411(c)(2) of the Act, 30 U.S.C. §921(c)(2), as implemented by 20 C.F.R. §718.303, at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, and at Section 411(c)(5) of the Act, 30 U.S.C. §921(c)(5), as implemented by 20 C.F.R. §718.306, are inapplicable to this survivor's claim filed after January 1, 1982, see 20 C.F.R. §§718.303(c), 718.305(a), (e), 20 C.F.R. §718.306(a); Director's Exhibit 1.

<sup>3</sup> The administrative law judge found, by inference, that the existence of pneumoconiosis arising out of coal mine employment was established, see 20 C.F.R. §§718.202(a), 718.203, inasmuch as the administrative law judge considered all of the relevant medical opinions of record from Drs. Zaglama, Director's Exhibits 9, 11; Naeye, Director's Exhibit 36; Employer's Exhibits 4-5, Wald, Director's Exhibit 29, Perper, Claimant's Exhibit 1; Green, Claimant's Exhibit 3, and Fino, Employer's Exhibits 1, 6, all of whom diagnosed coal workers' pneumoconiosis, see *Trumbo, supra*; *Neeley, supra*; *Boyd, supra*. In addition, employer has not raised any issue in this regard, *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); see also *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

contributing factor in the miner's death, Director's Exhibits 9, 11. The administrative law judge found Dr. Zaglama's opinion too inconclusive to support a finding that pneumoconiosis did or did not contribute to the miner's death, see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988).

The remaining relevant medical opinion evidence includes the opinions of physicians who reviewed the relevant medical and autopsy evidence. Drs. Fino, Employer's Exhibits 1, 6, and Wald, Director's Exhibit 39, neither of whom is a pathologist, found that the miner's pneumoconiosis did not contribute to the miner's death and did not play any substantial role in the miner's death, respectively. Drs. Green, Claimant's Exhibit 3, and Perper, Claimant's Exhibit 1, both of whom are board-certified pathologists and professors of pathology, found that the miner's simple coal workers' pneumoconiosis was a substantial and major contributing factor in the miner's death, whereas Dr. Naeye, Director's Exhibit 36; Employer's Exhibits 4-5, also a board-certified pathologist and professor of pathology, found that the miner's simple coal workers' pneumoconiosis did not contribute in any way to his death.

The administrative law judge, within his discretion, gave more weight to the opinions of the pathologists than to the opinions of Drs. Wald and Fino in light of their superior relative qualifications, see *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990), *rev'd on other grounds*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Massey v. Eastern Associated Coal Corp.*, 7 BLR 1-37 (1984); see also *Cadwallader v. Director, OWCP*, 7 BLR 1-879 (1985). In addition, the administrative law judge noted that Drs. Wald and Fino based their opinions that pneumoconiosis did not contribute to the miner's death on their findings that the miner had no pulmonary problems or impairment during his lifetime. However, the administrative law judge found that the record did not support their findings, noting that the most recent pulmonary function studies of record were performed over ten years before the miner's death and that the most recent blood gas studies of record were performed nearly two years before the miner's death, whereas the record, see Director's Exhibit 15, indicated that the miner was suffering from pulmonary symptoms in August, 1995. The administrative law judge also found that Drs. Wald and Fino did not adequately explain the basis of their opinion on the miner's death, see *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic, supra*. Decision and Order at 6.

Regarding the pathologists' opinions, the administrative law judge gave little weight to the opinion of Dr. Naeye, who found that the miner's pneumoconiosis did not contribute to his death. Dr. Naeye based his opinion, in part, on his belief that there was no causal connection between the moderately severe centrilobular

emphysema that he diagnosed and the miner's coal mine dust exposure. However, given the fact that the miner had over thirty-seven years of coal mine employment, that Dr. Naeye admitted that the miner's emphysema could not be due to smoking as the miner was a minimal smoker and the fact that there was no other evidence in the record of an alternative source for the miner's emphysema, the administrative law judge found Dr. Naeye's opinion less credible, see *Stark v. Director, OWCP*, 9 BLR 1-36 (1986)(an administrative law judge may assign less weight to a medical opinion which presents an incomplete picture of the miner's health).<sup>4</sup> In addition, the administrative law judge noted that Dr. Naeye also based his opinion, in part, on his finding that the miner had no pulmonary impairment during his lifetime, which the administrative law judge found, as with Drs. Fino and Wald, was not supported in the record and not adequately explained, see *Fields, supra*; *Lucostic, supra*. Finally, the administrative law judge found that the opinion of Dr. Naeye, that pneumoconiosis did not contribute to the miner's death because pneumoconiosis does not progress after a miner's coal dust exposure ceases and because the miner's pulmonary condition was normal when he retired, was contrary to the Act, in accordance with the holdings of the Third Circuit Court in *Labelle Processing Co. v. Swarrow*, 72 F. 3d 308, 315, 20 BLR 2-76, 2-89 (3d Cir. 1995) and *Kowalchick v. Director, OWCP*, 893 F.2d 615, 13 BLR 2-226 (3d Cir. 1990). Ultimately, the administrative law judge found that the qualifications of Dr. Green were as great if not greater than Dr. Naeye's and found that the opinions of Drs. Green and Perper were credible and established that pneumoconiosis was a substantially contributing cause of the miner's death.

Employer contends that the administrative law judge erred in finding that the opinion of Dr. Naeye was contrary to the Act. Employer contends that Dr. Naeye did not state that pneumoconiosis never progresses or never contributes to death, but only that simple coal workers' pneumoconiosis and centrilobular emphysema do not progress. Moreover, employer contends that because the miner had no pulmonary abnormality when he was alive, any issue as to whether pneumoconiosis is progressive is moot.

Contrary to employer's contention, Dr. Naeye did state in his opinion that simple coal workers' pneumoconiosis does not progress after coal mine dust

---

<sup>4</sup> Similarly, the administrative law judge also found Dr. Fino's opinion that the miner's emphysema did not arise from his coal dust exposure less credible, see *Stark, supra*.

exposure ceases, see Employer's Exhibits 4 and 5 at 19. As the administrative law judge noted, courts have long acknowledged that pneumoconiosis is a progressive and irreversible disease, see *Mullins Coal Co. Of Va. v. Director, OWCP*, 484 U.S. 135, 151, 11 BLR 2-1, 2-9 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Old Ben Coal Co. v. Scott*, 144 F.3d 1045, 21 BLR 2-391 (7th Cir. 1998); *Peabody Coal Co. v. Spese*, 117 F.3d 1001, 21 BLR 2-113 (7th Cir. 1997)(*en banc rehearing*), *modifying*, 94 F.3d 369 (7th Cir. 1996), *and affirming* 19 BLR 1-45 (1995); *Swarrow, supra*; *Kowalchick, supra*; *Back v. Director, OWCP*, 796 F. 2d 169, 172, 9 BLR 2-93, 2-97 (6th Cir. 1986); see also *Andryka v. Rochester & Pittsburgh Coal Co.*, 14 BLR 1-34 (1990); *Stanley v. Betty B Coal Co.*, 13 BLR 1-72 (1990); *Belcher v. Beth-Elkhorn Corp.*, 6 BLR 1-1180 (1984). In addition, the Third Circuit Court noted in *Swarrow, supra*, that the Report of the Surgeon General, the Health Consequences of Smoking: Cancer and Chronic Lung Disease in the Workplace (1985), cited by employer in that case in support of its contention that simple coal workers' pneumoconiosis does not progress absent further exposure to coal dust, discusses chronic bronchitis caused by coal dust exposure, "but at no point suggests that industrial chronic bronchitis cannot progress in the absence of continuous dust exposure," see *Swarrow*, 72 F.3d at 315, 20 BLR at 2-91. In any event, employer does not challenge the administrative law judge's other findings regarding Dr. Naeye's opinion, *i.e.*, that the basis of Dr. Naeye's opinion, in part, that there was no causal connection between the miner's emphysema and his coal mine dust exposure was not credible, see *Stark, supra*, or that the basis of Dr. Naeye's opinion, in part, that the miner had no pulmonary impairment during his lifetime was not supported in the record and not adequately explained, see *Fields, supra*; *Lucostic, supra*. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Thus, as the administrative law judge provided other valid, alternative reasons for giving less weight to Dr. Naeye's opinion, any potential error by the administrative law judge in this regard would be harmless, see *Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988); *Kozele v. Rochester & Pittsburg Coal Co.*, 6 BLR 1-378 (1983); see also *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Consequently, we reject employer's contention that the administrative law judge erred in giving less weight to Dr. Naeye's opinion.

Finally, employer contends that the administrative law judge erred in crediting the opinions of Drs. Green and Perper, as employer contends that their opinions, unlike the opinions of Drs. Wald, Fino and Naeye, were contrary to the findings of the autopsy prosector. Employer contends that the autopsy prosector's finding of mild bilateral ventricular hypertrophy is contrary to Dr. Green's diagnosis of significant cor pulmonale, that Dr. Green's finding of pulmonary hypertension is contrary to the autopsy prosector's findings, and that Dr. Green's finding of moderately severe centriacinar, panacinar and scar type emphysema and Dr.

Perper's finding of extensive centrilobular emphysema is contrary to the autopsy prosector's finding of mild focal emphysema. However, the autopsy prosector and both Drs. Green and Perper all diagnosed pneumoconiosis. Although the administrative law judge found the autopsy prosector's relevant opinion that simple coal workers' pneumoconiosis "may" have been a minor contributing factor in the miner's death too inconclusive to support a finding that pneumoconiosis did or did not contribute to the miner's death, see *Justice, supra*, the administrative law judge, within his discretion, credited the opinions of Drs. Green and Perper as credible and sufficient to establish that pneumoconiosis was a substantially contributing cause of the miner's death.

The administrative law judge, as the trier-of-fact, has broad discretion to assess the evidence of record, draw his own conclusions and inferences therefrom, see *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark, supra*, and determine whether an opinion is documented and reasoned, see *Fields, supra*; *Lucostic, supra*. Thus, inasmuch as the administrative law judge's function is to resolve the conflicts in the medical evidence, see *Lafferty, supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989), and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge, see *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), we affirm the administrative law judge's finding that death due to pneumoconiosis was established pursuant to Section 718.205(c) as supported by substantial evidence, see *Lukosevicz, supra*.

Accordingly, the Decision and Order of the administrative law judge's awarding survivor benefits is affirmed.

SO ORDERED.

---

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

---

ROY P. SMITH

Administrative Appeals Judge

---

MALCOLM D. NELSON, Acting  
Administrative Appeals Judge