

BRB No. 01-0515 BLA

MARY E. DOWER)	
(Widow of WILLIAM DOWER))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Jeffrey S. Goldberg (Eugene Scalia, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (00-BLA-0512) of Administrative Law Judge Ainsworth H. Brown denying benefits 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 In this survivor's claim, after crediting the miner with twenty-two years of coal mine employment and finding that the existence of pneumoconiosis had already

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

been established in the miner's claim for benefits on the basis of x-ray evidence,² the administrative law judge found that the evidence failed to establish that the miner's death was caused by, substantially contributed to by, or hastened even briefly by pneumoconiosis. Accordingly, benefits were denied in this survivor's claim.

On appeal, claimant contends that the opinions of Drs. Kraynak and Herb establish death due to pneumoconiosis and that the administrative law judge erred in according greater weight to the contrary medical opinions of Drs. Cander and Spagnolo. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence.

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

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). For survivors' claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see Lukosevich v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989).

² Benefits were awarded on a miner's claim filed May 5, 1983. Director's Exhibit 15. Because the miner's claim was filed after January 1, 1982, claimant is not eligible for benefits pursuant to the miner's award. *See Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1987).

In challenging the administrative law judge's finding that the medical opinion evidence was insufficient to establish death due to pneumoconiosis, claimant argues that the administrative law judge erred in not crediting the opinions of Drs. Kraynak and Herb, which were well-reasoned and documented, and further argues that the opinions of these physicians should have been given greater weight because they were treating physicians, as opposed to the opinions of Drs. Cander and Spagnolo, who despite their excellent qualifications, never examined the miner and did not diagnose the existence of pneumoconiosis. Director's Exhibits 5, 6, 18, 20; Claimant's Exhibit 1.

While an administrative law judge is to accord great weight to the opinions of treating physicians, especially "when their opinions reflect expert judgment based on a continuing observation of the [claimant's] condition over a prolonged period of time," *Morales v. Apfel*, 225 F.3d 310, 317 (3d Cir. 2000) quoting *Plummer v. Apfel*, 186 F.3d 422, 429 (3d Cir. 1999), the administrative law judge is not required to accord greater weight to the opinion of the treating physician when it is unreasoned. *Lango v. Director, OWCP*, 104 F.3d 573, 577, 21 BLR 2-12, 2-20-21 (3d Cir. 1997). In this case, the administrative law judge permissibly credited the opinions of Drs. Spagnolo and Cander over the opinions of Drs. Kraynak and Herb, treating physicians, because of their superior credentials. Decision and Order at 13; Director's Exhibits 7, 18, Claimant's Exhibit 1. This was rational. *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Burns v. Director, OWCP*, 7 BLR 1-597 (1984).³ Further, in evaluating the opinions, while acknowledging that deference should be accorded the opinions of treating and examining physicians, the administrative law judge, nonetheless, found that although Dr. Kraynak had treated the miner for years, because he had not attended the miner during the last two months of the miner's life or provided care during the miner's terminal hospitalization, "there was no indication in his examination of the record that he enjoys an especial advantage in perspective and observation that is superior to those of the Director's experts under the particular circumstances of this claim." Decision and Order at 13. Further, the administrative law judge permissibly accorded less weight to the opinions of Drs. Kraynak and Herb, as Dr. Kraynak underestimated the miner's cigarette smoking history

³ The administrative law judge noted that Dr. Kraynak was board-eligible in family practice and held memberships in the American Osteopathic Association, the Pennsylvania Osteopathic Association and the Northumberland Medical Society, Claimant's Exhibit 1 at 3-4, while Dr. Cander was Board certified in Internal Medicine, a clinical professor of medicine at Hahnemann Medical College, Philadelphia, and both Head, Section of Chest Disease and Director of Medical Education at Albert Einstein Medical Center, Philadelphia, Director's Exhibit 19, and Dr. Spagnolo was Board certified in Internal Medicine with a subspecialty in pulmonary diseases, an associate professor of medicine, and the Director of the Division of Pulmonary Diseases at George Washington University Medical Center. Director's Exhibit 7. Dr. Herb's credentials do not appear in the record. Director's Exhibit 5.

and Dr. Herb did not adequately discuss the impact of the miner's cigarette smoking history in the development of his chronic obstructive pulmonary disease or its role in the miner's death.⁴ See *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985); see *Risher v. Director, OWCP*, 940 F.2d 327, 330-31, 15 BLR 2-186 (8th Cir. 1991)(discounting opinion based on an inaccurate medical history). Rather, the administrative law judge permissibly accorded greater weight to the opinions of Drs. Spagnolo and Cander that the miner's death was due to cardiac failure and was not hastened in any manner by pneumoconiosis based on their superior credentials and the quality of "their explanations and analyses." Decision and Order at 15; see *Evosevich v. Consolidation Coal Co.*, 789 F.2d 1021, 1028, 9 BLR 2-10, 2-20-21 (3d Cir. 1986); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269 (4th Cir. 1997); *Collins v. J & L Steel (LTV Steel)*, 21 BLR 1-181 (1999); *Clark v. Karst-Robbins Coal Corp.*, 12 BLR 1-149 (1989)(*en banc*); *King v. Cannelton Industries, Inc.*, 8 BLR 1-146, 1-149 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Nor, contrary to claimant's contention, does the fact that Drs. Spagnolo and Cander found that the x-ray evidence did not show the existence of pneumoconiosis render their opinions less credible since they acknowledged that even if the miner may have had minimal pneumoconiosis, it did not contribute in any way to his death. See *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378 (1983). See Decision and Order at 9-11; Director's Exhibits 7, 18.

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, see *Maypray, supra*, and the Board may not reweigh the evidence or substitute its own inferences on appeal if the administrative law judge's findings are supported by substantial evidence. See *Clark, supra*; *Anderson, supra*. Thus, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis and further affirm the denial of benefits as it is supported by substantial evidence and is in accordance with law.

⁴ Dr. Kraynak found a 5 year smoking history, while the administrative law judge found that the miner had a smoking history of 20 years. Decision and Order at 12, 14.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge