

BRB No. 03-0594 BLA

ANNA M. KITZMILLER)
(Widow of KENNETH D.)
KITZMILLER))

Claimant-Petitioner)

v.)

BUFFALO COAL COMPANY)

DATE ISSUED: 02/11/2004

and)

WEST VIRGINIA COAL WORKERS')
PNEUMOCONIOSIS FUND)

Employer/Carrier-)
Respondents)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS,)
UNITED STATES DEPARTMENT)
OF LABOR)

Party-in-Interest)

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Mollie W. Neal,
Administrative Law Judge, United States Department of Labor.

C. Patrick Carrick (Carrick Law, PLLC), Morgantown, West Virginia, for
claimant.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and
GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order (2001-BLA-1146) of
Administrative Law Judge Mollie W. Neal denying 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).¹ Based on employer's concession, as supported by the record, the administrative law judge found that the miner had pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202 and 718.203(b). The administrative law judge further found, however, that the weight of the evidence was insufficient to establish either that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), or that claimant was entitled to invocation of the irrebuttable presumption of death due to pneumoconiosis, *see* 30 U.S.C. §921(c)(3), 20 C.F.R. §§718.304, 718.205(c)(3). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in his weighing of the medical opinion evidence relevant to the issues of complicated pneumoconiosis at Section 718.304 and the cause of the miner's death at Section 718.205(c). Employer has not filed a response brief, and the Director, Office of Workers' Compensation Programs, has declined to participate in 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹The 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 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, are to the amended regulations.

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(a)(1)-(3); *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). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that 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)-(3). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).²

On the issue of complicated pneumoconiosis at Section 718.304, claimant contends that the administrative law judge erred in failing to credit the opinion of Dr. Thompson, the autopsy prosector, over the conflicting opinion of Dr. Crouch, a Board-certified pathologist who reviewed the autopsy report and slides. Claimant's arguments amount to a request to reweigh the evidence, which is beyond the Board's scope of review. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989). The administrative law judge accurately reviewed the autopsy findings of Dr. Thompson, who reported nodules ranging up to two centimeters in greatest dimension and concluded that "some of the larger nodules would appear to meet criteria for progressive massive fibrosis," Director's Exhibit 18, and the opinion of Dr. Crouch, who specifically disagreed and found simple pneumoconiosis but no massive fibrosis, Employer's Exhibit 1. Decision and Order at 3, 5. The administrative law judge then acted within her discretion in finding that since there was no basis in the record to credit one physician's opinion over the other, *see Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000), the evidence was in equipoise and thus claimant failed to meet her burden at Section 718.304 by a preponderance of the evidence. Decision and Order at 5; *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18

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

BLR 2A-1 (1994). As substantial evidence supports the administrative law judge's findings at Section 718.304, they are affirmed.

Claimant also contends that the administrative law judge erred in weighing the conflicting medical opinions regarding the cause of the miner's death at Section 718.205(c). Specifically, claimant maintains that it was irrational for the administrative law judge to credit the opinion of Dr. Crouch, who did not examine the miner during his lifetime nor physically examine the body or organs after death, over the opinion of Dr. Johnson, the miner's treating physician. Claimant's arguments are without merit. While the opinion of a treating physician may be entitled to special consideration, there is neither a requirement nor a presumption in the Fourth Circuit that treating or examining physicians' opinions be given greater weight than the opinions of other expert physicians. *See Consolidation Coal Co. v. Held*, 314 F.3d 184, 22 BLR 2-564 (4th Cir. 2002); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993). In the present case, the administrative law judge determined that Dr. Johnson, whose qualifications were unknown, opined that the miner's "difficulty breathing due to his pneumoconiosis could have been a contributing factor to his heart attack and death," Director's Exhibit 19, whereas Dr. Crouch concluded that the miner's pneumoconiosis did not cause, contribute to, or hasten the miner's death, Employer's Exhibit 1. Decision and Order at 3-4. After considering all of the medical evidence and the qualifications of the physicians, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Crouch, and discounted the opinion of Dr. Johnson because she found that it was conclusory and equivocal, and that it did not constitute a reasoned medical opinion. Decision and Order at 4-5; *see Sterling Smokeless Coal Co. v. Akers*, 121 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge's findings pursuant to Section 718.205(c) are supported by substantial evidence and are affirmed. Consequently, we affirm the administrative law judge's denial of benefits.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge