

BRB No. 05-0697 BLA

EDNA MILOSER)	
(Widow of ANDREW MILOSER))	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: 02/28/2006
STANFORD MINING COMPANY)	
)	
Employer-Respondent)	
)	
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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

W. William Prochot (Greenberg Traurig PLLC), Washington, D.C., for employer.

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

PER CURIAM:

Claimant, the surviving spouse of the deceased miner, appeals the Decision and Order – Denying Benefits (04-BLA-6188) of Administrative Law Judge Michael P. Lesniak with respect to 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). The administrative law judge accepted the parties’ stipulation to forty-three years of coal mine employment and considered the claim, filed on April 10, 2002, under the regulations set forth in 20 C.F.R. Part 718. The administrative law judge found that the existence of legal pneumoconiosis was established under 20 C.F.R.

§718.202(a)(4) and that the presumption that the miner's pneumoconiosis arose out of coal mine employment, set forth in 20 C.F.R. §718.203(b), was invoked and was not rebutted. The administrative law judge further determined, however, that claimant failed to prove that pneumoconiosis caused or contributed to the miner's death pursuant to 20 C.F.R. §718.205(c)(1) and (c)(2). He also determined that the irrebuttable presumption of death due pneumoconiosis, set forth in 20 C.F.R. §718.304 and referenced in 20 C.F.R. §718.205(c)(3), is not available in this case. Accordingly, benefits were denied.

Claimant contends that the administrative law judge did not properly weigh the relevant medical opinions of record. Employer has responded and urges affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.¹

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'Keefe 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 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. Pneumoconiosis is a substantially contributing cause of the miner's death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5); see *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); *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).²

Claimant argues that the administrative law judge did not provide valid reasons for discrediting the medical opinions supportive of her burden under Section 718.205(c)(2)

¹ We affirm as unchallenged on appeal the administrative law judge's findings under 20 C.F.R. §§718.205(c)(1) and (c)(3). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as the miner's last year of coal mine employment occurred in Pennsylvania. Director's Exhibits 1, 2; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

and did not explain why he found the contrary opinions of record to be more persuasive. Upon review of claimant's contentions, employer's response, the administrative law judge's Decision and Order, and the relevant medical evidence, we hold that claimant has not identified any error requiring remand.

Drs. Schaaf, Parks, and Begley reported that pneumoconiosis was a contributing cause of the miner's death, which was primarily due to pneumonia. Director's Exhibits 7-9; Claimant's Exhibits 1, 2. The administrative law judge rationally determined that Dr. Schaaf's opinion was not credible on the ground that the relevant x-ray interpretations upon which he relied in finding that the miner had pneumonia were conflicting and Drs. Begley and Kaplan persuasively stated that the films were difficult to read for pneumonia due to the presence of pleural effusion. Decision and Order at 10; Director's Exhibit 9; Claimant's Exhibit 2; Employer's Exhibits 1, 6; *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

The administrative law judge also acted within his discretion in finding that Dr. Parks's opinion was entitled to little weight, as Dr. Parks did not explain in specific terms how the miner's pneumoconiosis actually contributed to or hastened the miner's death. Decision and Order at 11; Director's Exhibit 8; *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Clark*, 12 BLR at 1-151. Finally, the administrative law judge rationally determined that the opinion in which Dr. Begley identified pneumoconiosis as a contributing cause of death was not persuasive, as Dr. Begley used equivocal language to describe the role that pneumoconiosis played in the miner's terminal illness. Decision and Order at 11; Claimant's Exhibit 2; *Lango*, 104 F.3d at 577, 21 BLR at 2-20-2-21; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988).

We affirm, therefore, the administrative law judge's determination that the evidence which could satisfy claimant's burden of proof under Section 718.205(c)(2) is insufficient to establish that pneumoconiosis hastened the miner's death, as it is rational and supported by substantial evidence. *Lukosevicz*, 888 F.2d at 1004, 13 BLR at 2-107-2-108. In light of our affirmance of this finding, we need not address claimant's allegations regarding the administrative law judge's consideration of the opinion in which Dr. Renn ruled out any link between pneumoconiosis and the miner's demise. Decision and Order at 10; Director's Exhibit 10; Employer's Exhibit 5. Error, if any, in the administrative law judge's crediting of Dr. Renn's opinion is harmless, as the administrative law judge acted rationally in discrediting the medical opinions supportive of claimant's burden of proof under Section 718.205(c)(2). *Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.³

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

³ Because we have affirmed the denial of benefits, we decline to address employer's argument that the administrative law judge erred in finding the existence of legal pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order at 8; *Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).