

BRB No. 06-0451 BLA

GENEVA M. ALLEN	)	
(Widow of CHARLES F. ALLEN)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 02/27/2007
	)	
WESTMORELAND COAL 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 Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe, Williams and Rutherford), Norton, Virginia, for claimant.

Douglas A. Smoot and Kathy L. Snyder (Jackson Kelly PLCC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (03-BLA-6030) of Administrative Law Judge Alice M. Craft rendered 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> Based on claimant's February 1, 2001 filing date, the administrative law judge adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718. The administrative law judge credited the miner with thirty-three years of coal mine employment and found the existence of simple coal worker's pneumoconiosis arising out of coal mine employment, based on employer's concessions. Decision and Order at 4. Addressing the merits of the survivor's claim, the administrative law judge found that the medical evidence was insufficient to establish that pneumoconiosis hastened the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits in this survivor's claim.

On appeal, claimant challenges the administrative law judge's findings under Section 718.205(c), arguing that the administrative law judge did not properly weigh the medical opinion evidence. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not submit a response brief on the merits of this appeal.<sup>2</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe 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,

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<sup>1</sup>Claimant is the widow of the miner, who died on September 26, 1999. Director's Exhibit 16. The miner filed a claim for benefits on December 10, 1979, the ultimate denial of which was affirmed by the Board on February 28, 1994, *Allen v. Westmoreland Coal Co.*, BRB No. 91-2070 BLA (Feb. 28, 1994)(unpublished). Director's Exhibit 1. The miner's appeal to the United States Court of Appeals for the Fourth Circuit was dismissed on May 10, 1994, for want of prosecution. *Allen v. Westmoreland Coal Co.*, No. 94-1359 (4th Cir. May 10, 1994)(unpublished); Director's Exhibit 1. Claimant filed her survivor's claim on February 1, 2001. Director's Exhibit 2. The survivor's claim is the only claim at issue.

<sup>2</sup> The parties do not challenge the administrative law judge's decision to credit the miner with thirty-three years of coal mine employment or her acceptance of employer's concession to the existence of pneumoconiosis arising out of coal mine employment, 20 C.F.R. §§718.202(a), 718.203(c). These findings are therefore affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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 survivor's 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 if 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.<sup>3</sup> 20 C.F.R. §718.205(c)(5); *Bill Branch Coal Co. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert denied*, 506 U.S. 1050 (1993).

Pursuant to Section 718.205(c), the administrative law judge found that claimant did not establish that pneumoconiosis hastened the miner's death. In particular, the administrative law judge considered all of the relevant evidence including the treatment notes, hospitalization reports, and death certificate by Dr. Winegar, the post-mortem lung biopsy report by Dr. Adelson, the consultative report and deposition of Dr. Castle, the medical report of Dr. Perper, and the opinions of Drs. Caffrey, Naeye and Tomashefski. Decision and Order at 28-32; Director's Exhibits 16, 18, 30; Employer's Exhibits 1-3, 5, 7. Weighing the relevant evidence, the administrative law judge found the opinions of Drs. Caffrey, Naeye and Tomashefski, that pneumoconiosis was not a substantially contributing cause of the miner's death, entitled to little probative weight because they based their diagnoses only on whether clinical pneumoconiosis played a role in the miner's death and did not consider the broader definition of legal pneumoconiosis. Decision and Order at 28-29; Employer's Exhibits 1-3. The administrative law judge found the opinion of Dr. Perper, that pneumoconiosis hastened the miner's death, to be a credible opinion that would be sufficient to establish entitlement, absent a more persuasive opinion to the contrary. Decision and Order at 30; Director's Exhibit 30. However, the administrative law judge accorded greatest weight to the opinion of Dr. Castle, that the miner's pneumoconiosis did not hasten his death, based on her finding that Dr. Castle gave a much more thorough explanation of the course of the miner's illness and the role that any lung impairment played in the miner's death. Decision and Order at 32; Employer's Exhibits 5, 7. In addition, the administrative law judge found that Dr. Castle's opinion was consistent with the miner's treatment records and the objective evidence of record. *Id.* Consequently, the administrative law judge found that

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<sup>3</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner's most recent coal mine employment occurred in Virginia. Director's Exhibit 1; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

claimant failed to establish that pneumoconiosis hastened the miner's death pursuant to Section 718.205(c).

In challenging the administrative law judge's findings, claimant contends that the administrative law judge should have accorded more probative weight to the opinion of Dr. Perper, that pneumoconiosis with associated centrilobular emphysema hastened the miner's death, based upon Dr. Perper's superior professional credentials as a Board-certified pathologist, over the contrary opinion of Dr. Castle, as Dr. Castle is a Board-certified pulmonologist. Claimant's Brief at 7, 8. In addition, claimant argues that Dr. Castle's opinion was not entitled to determinative weight, as Dr. Castle's conclusion that pneumoconiosis played no role in the miner's death is inconsistent with his acknowledgment that the conditions that led to the miner's death included a respiratory component. Claimant's Brief at 7. These allegations of error are without merit.

In weighing the relevant evidence, the administrative law judge acted within her discretion in giving substantial weight to the medical opinion of Dr. Castle, based on her determination that Dr. Castle provided a more thorough and complete explanation of his opinion regarding the lack of any causal connection between pneumoconiosis and the miner's death. Decision and Order at 32; Employer's Exhibits 5, 7; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). In addition, the administrative law judge rationally found that Dr. Castle's opinion was also consistent with the underlying documentation, including the treatment record and the objective evidence of record. *Id.* Moreover, contrary to claimant's contention, the administrative law judge noted that Dr. Castle opined that there was a respiratory component to the miner's death, but found that the physician's conclusion that pneumoconiosis played no role in the miner's demise, was fully explained and consistent with the underlying evidence. Decision and Order at 22-27; Employer's Exhibits 5, 7 at 19-20, 22-25, 27-30. As the administrative law judge considered the entirety of Dr. Castle's medical report and deposition testimony, including the discrepancy alleged by claimant, we affirm her weighing of Dr. Castle's opinion as a reasonable exercise of her discretion. Decision and Order at 26-27, 30-31; *Hicks*, 138 F.3d 524, 21 BLR 2-323; *Akers*, 131 F.3d 438, 21 BLR 2-269.

Furthermore, we reject claimant's contention that the administrative law judge erred in failing to accord greater weight on the issue of the cause of the miner's death to the opinion of Dr. Perper, based upon Dr. Perper's status as a Board-certified pathologist. Claimant's Brief at 7, 8. Contrary to claimant's contention, the administrative law judge was not required to mechanically accord greater weight to the opinion of Dr. Perper merely because he is a Board-certified pathologist. Rather, she properly considered all of the relevant evidence, *i.e.*, the evidence provided by both the pathologists of record, as well as the opinion of Dr. Castle, a pulmonologist, and provided a valid basis for according greater weight to Dr. Castle's opinion. Decision and Order at 32; *Sparks*, 213

F.3d at 191, 22 BLR at 2-260; *Hicks*, 138 F.3d at 533, 21 BLR at 2-341-342. Claimant's contention is tantamount, therefore, to a request that the Board reweigh the evidence, which is beyond the scope of the Board's authority. See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987). Thus, we affirm the administrative law judge's determination that the preponderance of the evidence of record does not support a finding that pneumoconiosis caused, contributed to, or hastened the miner's death pursuant to Section 718.205(c), and we further affirm the denial of benefits on this survivor's claim. *Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259; *Shuff*, 967 F.2d 977, 980, 16 BLR 2-90; *Neeley*, 11 BLR 1-85.

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge