

BRB No. 00-0407 BLA

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| CAROLYN SUE VASS |) | |
| (Widow of CARL VASS) |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| MAPLE MEADOW MINING COMPANY |) | DATE ISSUED: |
| |) | |
| 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 of Edward Terhune Miller,
Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle and Rundle, L.C.), Pineville, West
Virginia, for claimant.

Paul E. Frampton (Bowles, Rice, McDavid, Graff & Love), Fairmont,
West Virginia, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges,
and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (99-BLA-0155) of Administrative
Law Judge Edward Terhune Miller 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). Based on the parties'

¹Claimant is the widow of the miner, Carl Vass, who died on April 25, 1996.
Director's Exhibits 1, 11; Employer's Exhibit 3.

stipulation, the administrative law judge credited the miner with twenty-eight and three-quarter years of coal mine employment and adjudicated this survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Claimant also challenges the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Employer responds, urging affirmance of the administrative law judge's Decision and Order. 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on survivor's claims filed on or after January 1, 1982 only when the miner's death was due to pneumoconiosis. See 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). However, before any finding of entitlement can be made in a survivor's claim, a claimant must establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A claimant must also establish that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. See *Boyd, supra*.

Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R.

²Inasmuch as the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §718.202(a)(1)-(3) are not challenged on appeal, we affirm these findings. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

§718.202(a)(4). We disagree. Whereas Drs. Gaziano, Mullins, Nazer, Porterfield and the West Virginia Occupational Pneumoconiosis Board (WVOPB) opined that the miner suffered from pneumoconiosis, Director's Exhibits 5, 9, 11, 12; Employer's Exhibit 3, Drs. Fino and Tuteur opined that the miner did not suffer from pneumoconiosis, Director's Exhibit 21; Employer's Exhibits 2, 4, 5. Dr. Farid opined that the miner suffered from black lung. Employer's Exhibit 3. The administrative law judge properly accorded greater weight to the opinions of Drs. Fino and Tuteur than to the contrary opinions of Drs. Farid, Gaziano, Mullins, Nazer, Porterfield and the WVOPB, because he found their opinions to be better reasoned and documented. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149

³In a hospital report dated September 20, 1991, Dr. Porterfield diagnosed probable pneumoconiosis as an underlying condition. Employer's Exhibit 3. In a subsequent hospital report dated March 27, 1996, Dr. Porterfield noted that the miner "was seen in the office by Dr. Mullins for his COPD and pneumoconiosis." Director's Exhibit 9; Employer's Exhibit 3.

⁴In a hospital report dated April 11, 1995, Dr. Bhalodi noted a "[h]istory of COPD and Black Lung disease." Employer's Exhibit 3.

⁵The administrative law judge observed that a "finding of pneumoconiosis was made by members of the West Virginia Occupational Pneumoconiosis Board, who concluded that the miner had a 10% impairment, but that the miner's death was unrelated to occupational pneumoconiosis." Decision and Order at 7-8. The administrative law judge also observed that "a diagnosis of pneumoconiosis is reported in some of the medical records, and is listed in the death certificate." *Id.* at 7. The administrative law judge further observed that "Dr. Gaziano reported 'CWP,' based upon the death certificate." *Id.* The administrative law judge stated that "none of the diagnoses or findings are (*sic*) well-reasoned." *Id.* With regard to the hospital reports, the administrative law judge specifically observed that "[o]n occasion, coal worker's pneumoconiosis was listed among the diagnosed conditions." *Id.* at 4. However, the administrative law judge observed that "most of the hospital reports did not include a specific diagnosis of coal worker's pneumoconiosis." *Id.* at 5. The administrative law judge stated that "[t]hose that did, like Dr. Nazer's, did not disclose reasoned explanations for the diagnoses." *Id.* In contrast, the administrative law judge stated that "Drs. Fino and Tuteur, two Board-certified pulmonary specialists, provided detailed reports and deposition testimony which explained the bases for their conclusions that the miner did not suffer from pneumoconiosis or any other respiratory or pulmonary impairment related to coal mine employment." *Id.* at 8. The administrative law judge observed that "[a]lthough the miner had an extensive history of coal mine employment, and Dr. Mullins was one of the miner's treating physicians, the opinions of Drs. Fino and Tuteur are better reasoned and documented than the opinions to the contrary and

(1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Thus, we reject claimant's assertion that the administrative law judge erred in relying on the opinions of Drs. Fino and Tuteur. Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement under 20 C.F.R. Part 718 in a survivor's claim, *see Trumbo, supra*; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986), 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.

more consistent with the objective medical evidence, including the overwhelming preponderance of the negative chest x-rays and the variable and reversible nature of the miner's respiratory condition." *Id.*

⁶In view of our disposition of the case at 20 C.F.R. §718.202(a), we decline to address claimant's contentions with regard to 20 C.F.R. §718.205(c). *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge