

BRB No. 01-0424 BLA

HELEN H YONCE)	
(Widow of REX CLAYTON YONCE))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
CSX TRANSPORTATION, INCORPORATED))	
)	
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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Allen C. Trimble, Williamsburg, Kentucky, for claimant.

Rodney L. Baker II (Huddleston, Bolen, Beatty, Porter & Copen, LLP), Huntington, West Virginia, for employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (2000-BLA-18) of Administrative Law Judge Donald W. Mosser 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,

¹ Claimant is the surviving spouse of the miner, Rex Clayton Yonce, who died on October 19, 1998. Director's Exhibit 2. The miner's widow filed a claim for survivor's benefits on November 4, 1998. Director's Exhibit 1.

30 U.S.C. §901 *et seq.* (the Act).² The administrative law judge credited the miner with six years of coal mine employment and adjudicated this claim pursuant to 20 C.F.R. Part 718 (2000). The administrative law judge found that the evidence of record was sufficient to establish that the miner suffered from pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(c) (2000), but failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) (2000). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in his evaluation of the medical opinion evidence in finding that the evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2) (2000). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief on the merits in this appeal.

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 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 1, 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 suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304 (2000); *see 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). Pneumoconiosis is a "substantially contributing cause" of the miner's death if it hastens the miner's death.³ 20 C.F.R. §718.205(c)(5) (2001); *see Griffith v. Director,*

² 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 20 C.F.R. Parts 718, 722, 725 and 726 (2001).

³ This case arises within the jurisdiction of the United States Court of Appeals for the

OWCP, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

Sixth Circuit, as the miner's coal mine employment occurred in the Commonwealth of Kentucky. Director's Exhibit 37; see *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decision and Order denying benefits under 20 C.F.R. Part 718 is supported by substantial evidence and contains no reversible error. The administrative law judge acted within his discretion in according diminished weight to the opinion of Dr. Watts,⁴ in spite of his status as claimant's treating physician, since the physician did not explain the rationale for his conclusion or identify the particular medical studies he relied on in reaching his conclusion. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order at 7, 10; Director's Exhibits 5, 10. In addition, the administrative law judge, within a proper exercise of his discretion, discredited the opinion of Dr. O'Connor, a pathologist, because he did not provide a rationale for his conclusion that pneumoconiosis caused the miner's death. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984); Decision and Order at 4-5, 10; Claimant's Exhibit 1.

Furthermore, the administrative law judge also acted within his discretion in crediting the opinions of Drs. Hansbarger, Naeye, Castle and McSharry, that the miner's pneumoconiosis was too mild to have hastened or contributed in any way to his death, as the administrative law judge found that these physicians were highly qualified in their specialties and that their opinions were well-reasoned.⁵ Decision and Order at 10; Director's Exhibits 13-14; Employer's Exhibits 1-2; Hearing Transcript at 21-51; *see Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). While claimant argues that the administrative law judge erred in crediting the medical opinions of physicians who did not diagnose pneumoconiosis, the administrative law judge, in finding the existence of pneumoconiosis established, did so "because most of the physicians who did

⁴ The death certificate, signed by Dr. Watts, lists the immediate cause of the miner's death as non-small cell lung carcinoma, right lung abscess with squamous cell carcinoma, generalized pleural anthracosis (pneumoconiosis), pulmonary edema, black lung and asbestosis. Director's Exhibit 2.

⁵ Dr. Hansbarger is Board-certified in Anatomic and Clinical Pathology and Forensic Medicine. Decision and Order at 5-6; Director's Exhibit 13. Dr. Naeye is Board-certified in Anatomic and Clinical Pathology and is Chairman of the Department of Pathology for the College of Medicine of Pennsylvania State University. Decision and Order at 5; Director's Exhibit 13. Dr. Castle is Board-certified in Internal Medicine with a subspecialty in pulmonary disease and is a clinical professor of medicine at the University of Virginia. Decision and Order at 8; Employer's Exhibit 2. Dr. McSharry is Board-certified in Internal Medicine, Pulmonary Medicine and Critical Care Medicine and he practices as a pulmonologist. Decision and Order at 8; Hearing Transcript at 23, 26.

not diagnose pneumoconiosis did acknowledge the existence of anthracosis,” but dismissed its significance or attributed it to other causes. Decision and Order at 9.

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987). Thus, the administrative law judge permissibly found that the evidence was insufficient to establish death due to pneumoconiosis based on the more credible medical opinions by the physicians with superior qualifications who found that pneumoconiosis did not cause or contribute to the miner’s death. *Clark, supra; Fields, supra*. Consequently, we affirm the administrative law judge’s finding that the medical opinions of record failed to establish death due to pneumoconiosis pursuant to Section 718.205(c) (2000). Because the administrative law judge rationally found no credible evidence that would support claimant’s burden of establishing that the miner’s death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death, or that the miner’s death was caused by complications of pneumoconiosis, we must affirm the denial of benefits. 20 C.F.R. §718.205(c) (2000). *See Griffith, supra; Brown, supra*.

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