

BRB No. 02-0433 BLA

ELIZABETH HILL)
(Widow of ARTHUR HILL))
)
 Claimant-Petitioner))
)
 v.)
)
 PEABODY COAL COMPANY) DATE ISSUED:
)
 and)
)
 OLD REPUBLIC INSURANCE COMPANY)
)
 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 of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Brent Yonts, Greenville, Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge

PER CURIAM:

Claimant appeals the Decision and Order (00-BLA-0977) of Administrative Law Judge Robert L. Hillyard, denying benefits on a 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

¹Claimant is the widow of the miner, Arthur Hill, who died on May 9, 2000. Director's Exhibit. The miner filed a claim on June 20, 1983. On October 5, 1987, Administrative Law Judge Frederick D. Neusner awarded benefits. The award of

The administrative law judge credited the miner with forty-one years of coal mine employment and adjudicated this survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718 (2001).² The administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). However, the administrative law judge further found that the evidence was 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 did not support a finding that the miner's death was due to pneumoconiosis at Section 718.205(c). Employer responds, urging affirmance of the administrative law judge's denial of benefits. 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

benefits in the miner's claim was ultimately affirmed by the United States Court of Appeals for the Sixth Circuit. Claimant filed a survivor's claim on June 19, 2000. Director's Exhibit 1.

²The 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. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

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 a survivor’s claim filed on or after January 1, 1982, only when the claimant establishes that the miner had pneumoconiosis arising out of coal mine employment and that the miner’s death was due to pneumoconiosis.³ See 20 C.F.R. §§718.1, 718.202(a), 718.205(c); *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). Pursuant to Section 718.205(c)(5), pneumoconiosis is considered a substantially contributing cause of death, if it hastened the miner’s death. 20 C.F.R. §718.205(c)(5); see also *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 135 (6th Cir. 1993).

³Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner’s death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable....
- (5) 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).

Upon considering the evidence relevant to Section 718.205(c), the administrative law judge found that the opinions of three physicians - Drs. Fino, Caffrey, and Burki - addressed the issue of whether pneumoconiosis caused or hastened the miner's death.⁴ The administrative law judge found that all three reports, in which the physicians concluded that pneumoconiosis did not play a role in the miner's death, are reasoned, documented, and supported by the evidence of record. Decision and Order at 13. The administrative law judge also considered the death certificate on which Dr. Armstrong listed the immediate cause of death as carcinoma of the pancreas and identified pneumonia and pneumoconiosis as contributing causes of death. Director's Exhibit 6. The administrative law judge accorded less weight to the death certificate, as Dr. Armstrong did not provide an explanation for his apparent determination that pneumoconiosis contributed to the miner's death. The administrative law judge gave greater weight to the opinions of Drs. Burki, Caffrey and Fino as he found them to be better reasoned and documented. Furthermore, the administrative law judge accorded substantial weight to the opinions of Drs. Fino and Caffrey due to their qualifications as Board-certified specialists in pulmonology and pathology, respectively. Decision and Order at 14. The administrative law judge concluded, therefore, that the weight of the evidence did not support a finding that the miner's death was due to pneumoconiosis.

On appeal, claimant asserts that the administrative law judge should have given dispositive weight to the death certificate as it was completed by the miner's treating physician. This contention is without merit. While the Sixth Circuit, within whose jurisdiction this case arises, has held that the opinions of treating physicians

⁴Dr. Burki reviewed the medical evidence and in response to an inquiry letter from the Office of Workers' Compensation Programs regarding the cause of death, concluded that the miner's death was due to pneumonia and pancreatic carcinoma, neither of which was related to pneumoconiosis. The physician further opined that there is no evidence that pneumoconiosis contributed to or hastened the miner's death. Director's Exhibit 9.

Dr. Caffrey reviewed the miner's medical records and opined on September 5, 2001 that the miner's death was due to carcinoma of the pancreas and pneumonia, but that the miner did suffer from simple coalworkers' pneumoconiosis which did not cause, contribute to, or hasten the miner's death. Employer's Exhibit 1.

Dr. Fino issued a report on October 17, 2001 based on a review of the medical record. He concluded that carcinoma of the pancreas is a uniformly fatal condition and that coalworkers' pneumoconiosis did not cause, contribute to or hasten the miner's death. Employer's Exhibit 2.

should be given their proper deference, see *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993), the court has also held that there is no requirement that administrative law judges give conclusive weight to the opinions of treating physicians.⁵ The court has further held that an administrative law judge may properly determine that the opinion of a treating physician is entitled to diminished weight, as it is not well documented or well reasoned. See *Wolf Creek Collieries v. Director, OWCP [Stephens]*, 298 F.3d 511, BLR (6th Cir. 2002); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). In the instant case, therefore, the administrative law judge acted within his discretion in finding that the death certificate was unreasoned in light of Dr. Armstrong's failure to explain his conclusions. Moreover, the administrative law judge rationally accorded greater weight to the opinions of Drs. Fino and Caffrey based upon their superior credentials.

⁵This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner's qualifying coal mine employment occurred in the Commonwealth of Kentucky. Director's Exhibit 2; see *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Thus, we reject claimant's assertion that the administrative law judge should have given dispositive weight to the death certificate by Dr. Armstrong based upon Dr. Armstrong's status as the miner's treating physician.⁶ Further, since it is supported by substantial evidence, we affirm 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). See *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); see also *Brown, supra*.

In view of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis under Section 718.205(c), an essential element of entitlement, see *Trumbo, supra*; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we affirm the administrative law judge's denial of benefits.

⁵The revised regulation at 20 C.F.R. §718.104(d)(5) provides that “[i]n appropriate cases, the relationship between the miner and his treating physician may constitute substantial evidence in support of the adjudication officer's decision to give that physician's opinion *controlling* weight, provided that the weight given to the opinion of a miner's treating physician shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole.” 20 C.F.R. §718.104(d)(5) (emphasis added). The revised regulation at Section 718.104(d)(5) does not apply to the instant claim because it was filed before January 19, 2001.

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

REGINA C. McGRANERY
Administrative Appeals Judge