

BRB No. 03-0243 BLA

HILDA A. FULLER	)	
(Widow of IRA W. FULLER)	)	
	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED:
01/30/2004	)	
VIRGINIA CREWS 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 Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

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

John P. Scherer (File, Payne, Scherer & File), Beckley West Virginia, for employer.

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order Denying Benefits (01-BLA-0864) of Administrative Law Judge Pamela Lakes Wood (the administrative law judge) on a

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<sup>1</sup>Claimant is Hilda A. Fuller, surviving spouse of the miner, Ira W. Fuller, who died on May 11, 2000. Director's Exhibit 14. Claimant filed her survivor's claim with the Department of Labor on May 31, 2000. Director's Exhibit 1.

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>2</sup> The administrative law judge found the evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(2), 718.203, but 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 the claim.

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Claimant asserts that the administrative law judge erred by crediting the medical opinions of Drs. Castle, Fino, Bush and Jarboe. Claimant also asserts that the administrative law judge erred by discrediting the opinions of Drs. Hopper and Patel. Employer, in response, urges affirmance of the administrative law judge's "denial of modification" and, thereby, of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter, indicating that he will not file a response brief.<sup>3</sup>

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Because this survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).<sup>4</sup> *See* 20

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<sup>2</sup>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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>3</sup>We affirm, as unchallenged on appeal, the administrative law judge's findings that the existence of pneumoconiosis arising out of coal mine employment is established pursuant to 20 C.F.R. §§718.202, 718.203, and that the evidence fails to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(1) and (c)(3). *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>4</sup>Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). Pneumoconiosis is a "substantially contributing cause" of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

Claimant asserts that the administrative law judge erred when she found that the evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(2) and the standard set forth in *Shuff*. There are six relevant medical opinions of record, two of which are supportive of this claim: the opinions of Drs. Hopper and Patel. Dr. Hopper completed the miner's death certificate. He found that the miner suffered a "sudden death due to a presumed myocardial infarction." Director's Exhibit 14. Dr. Hopper listed lung cancer, edema and diabetes as other contributing causes. *Id.* Dr. Hopper also submitted a medical report dated August 10, 2000, wherein he opined that contributing factors to the miner's death included coal workers' pneumoconiosis. Dr. Hopper noted in that report that he did not include pneumoconiosis as a contributing cause of the miner's death on the death certificate. Director's Exhibit 19. Subsequently, on October 16, 2000, Dr. Hopper was asked by the district director to respond to the specific question of whether black lung hastened the miner's death. Dr. Hopper responded that coal workers' pneumoconiosis was not a critical factor, as he was unaware of evidence that coal workers' pneumoconiosis could cause lung cancer. Director's Exhibit 20. Dr. Hopper concluded that the miner's "actual death was probably sudden cardiac etiology and not directly related to

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- (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.
  - (3) Where the presumption set forth at §718.304 is applicable.
  - (4) However, survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing caused of death.
  - (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).

black lung.” *Id.* Finally, on March 1, 2001, Dr. Hopper responded to another inquiry by the district director by stating: “I hate giving more answers on something that there is no clear answer on.” Director’s Exhibit 24. Dr. Hopper also stated that his previous letter provided his opinion on the matter and he replied that he didn’t “have much to add to it.” *Id.*

Claimant also relies upon Dr. Patel’s opinion. Dr. Patel submitted a two-paragraph report wherein he opined that the miner suffered from pneumoconiosis and stated that while the miner sustained a myocardial infarction, he believed “that pneumoconiosis led to development of COPD and hypoxemia which imposed a lot of stress in the cardiac disease leading to earlier death.” Director’s Exhibit 19.

In contrast, Drs. Castle, Fino, Bush and Jarboe all opined that the miner did not suffer from pneumoconiosis, that the miner died due to a sudden cardiac event, and that pneumoconiosis did not cause, contribute to, or hasten, the miner’s death. Director’s Exhibit 35; Employer’s Exhibits 1-4. Dr. Fino further concluded that, even assuming that the miner did suffer from pneumoconiosis, it was not a factor in the miner’s death. He additionally opined that lung cancer contributed to the miner’s death, but the miner’s lung cancer was not caused by coal workers’ pneumoconiosis. Director’s Exhibit 35.

Claimant specifically asserts that the administrative law judge erred by discrediting the opinions of Drs. Hopper and Patel at Section 718.205(c)(2). The administrative law judge began her analysis of the medical opinion evidence by stating that “[e]xtended discussion is necessary (sic) because all of the opinions fall short of establishing causation [of death] under the pertinent regulatory standard.” Decision and Order at 10-11. The administrative law judge weighed Dr. Hopper’s opinion, and concluded that “[a]lthough [Dr. Hopper] suggested that CWP played a part in the Miner’s demise, treating physician Dr. Hopper declined to say that it actually was a substantial contributing cause or that it hastened the Miner’s death.” Decision and Order at 11. We hold that the administrative law judge considered the totality of Dr. Hopper’s opinion and permissibly concluded that it was not sufficient to establish that pneumoconiosis substantially contributed to, or hastened, the miner’s death pursuant to Section 718.205(c)(2) and the standard set forth in *Shuff*; *see also Tackett v. Armco, Inc.*, 17 BLR 1-103 (1993).

With respect to Dr. Patel’s opinion, the administrative law judge discredited Dr. Patel’s opinion, in part, because she found that Dr. Patel “provided no analysis or discussion of the mechanism involved.” Decision and Order at 11. Thus, the administrative law judge permissibly discounted Dr. Patel’s opinion because she found that it was not reasoned. *See Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988). We affirm the administrative law judge’s determination to discount Dr. Patel’s opinion on the basis that it was not reasoned, as within her discretion as fact-finder. *Id.*

Claimant also asserts that the administrative law judge erred in crediting the opinions of Drs. Castle, Fino, Bush and Jarboe, as violative of established Fourth Circuit precedent. Claimant's contention has merit, as the administrative law judge's findings are contrary to the holding in *Scott v. Mason Coal Co.*, 289 F. 3d 263, 270, 22 BLR 2-372, 383-84 (4th Cir. 2002). The Fourth Circuit in *Scott* held that an administrative law judge is prohibited from crediting opinions on the issue of causation which contradict the administrative law judge's particular determination that the miner had pneumoconiosis, be it clinical, legal, or both. *Scott*, 283 F. 3d 270, 22 BLR 2-383-84. In the instant case, the administrative law judge found the miner suffered from coal workers' pneumoconiosis. Drs. Castle, Fino, Bush and Jarboe opined that the miner did not have coal workers' pneumoconiosis and that coal workers' pneumoconiosis did not cause, contribute to, or hasten, the miner's death. Director's Exhibit 35; Employer's Exhibits 1-4. The administrative law judge's decision to credit these opinions is therefore contrary to the Fourth Circuit's decision in *Scott*. We hold, however, that the administrative law judge's error with respect to her consideration of the opinions of Drs. Castle, Fino, Bush and Jarboe is harmless: The administrative law judge permissibly discredited the opinions of Drs. Hopper and Patel, the only medical opinions that could arguably support a finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) and *Shuff*. We affirm, therefore, the administrative law judge's finding that the evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), and thereby, her denial of survivor's benefits. *Neeley*, at 11 BLR 1- 87.

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge