

BRB No. 06-0603 BLA

JUDITH A. NEUMEISTER)	
(Widow of WARREN NEUMEISTER))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 01/31/2007
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Helen H. Cox (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (04-BLA-5721) of Administrative Law Judge Ralph A. Romano 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). The miner died on May 22, 2004, and claimant filed her claim for survivor's benefits on July 15, 2004.¹ Director's Exhibits

¹ At the time of the miner's death, he was receiving benefits on a claim he filed on September 10, 2003, and which the district director awarded on February 18, 2004. Director's Exhibit 1.

2, 3. The administrative law judge accepted the parties' stipulation to the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202 and 718.203. However, the administrative law judge found that the evidence did not 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 contends that the administrative law judge erred in his analysis of the medical evidence. Claimant argues further that the administrative law judge erred in failing to make a finding as to the length of the miner's coal mine employment. The Director, Office of Workers' Compensation Programs responds, urging affirmance of the administrative law judge's denial of benefits.

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

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.205(a)(1)-(3); 718.202(a); 718.203; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). For survivors' claims filed on or after January 1, 1982, where pneumoconiosis is not the cause of death, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a "substantially contributing cause or factor leading to" the miner's death. 20 C.F.R. §718.205(c)(2), (4). 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)(5); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 1006, 13 BLR 2-100, 2-108 (3d Cir. 1989). Failure to establish any one of these elements precludes entitlement. *See* 20 C.F.R. §718.205(a)(1)-(3); *Trumbo*, 17 BLR at 1-87.

The record indicates that in May 2004, the miner was diagnosed with small cell cancer of the lung. Director's Exhibit 6. He died at home on May 22, 2004. Director's Exhibit 3. No autopsy was performed. The miner's death certificate, completed by a deputy coroner, listed metastatic lung cancer as the cause of death. Director's Exhibit 3. No other causes or conditions were listed.

Three medical reports addressed whether pneumoconiosis hastened the miner's death.² Dr. Kraynak, who is Board-eligible in Family Practice and who began treating the miner in April 2004, stated that the miner would have lived longer had his pulmonary system not been compromised by coal workers' pneumoconiosis before the lung cancer set in. Claimant's Exhibit 4; Claimant's Exhibit 5 at 17-18; Claimant's Exhibit 6. Dr. Kraynak testified that the miner's sixty-pack-year history of smoking had no impact on his death, but that coal workers' pneumoconiosis, for which the miner was treated for years, was a substantially contributing factor to his death. Claimant's Exhibit 5 at 13, 18.

Dr. Prince, who is Board-certified in Internal Medicine, Pulmonary Disease, and Critical Care Medicine, reviewed the miner's medical records and stated that the miner died of respiratory failure from small cell carcinoma of the lung. Claimant's Exhibits 1-3, 6. Dr. Prince stated further that the lung cancer was superimposed on a totally disabling pulmonary condition due to pneumoconiosis, and he opined that had the pneumoconiosis not been present, the miner would have been better able to withstand the lung cancer. Claimant's Exhibits 2, 3. Dr. Prince concluded that since pneumoconiosis was a contributing factor to the miner's loss of lung function, pneumoconiosis hastened his death from lung cancer. Claimant's Exhibit 6.

By contrast, Dr. Sherman, who is Board-certified in Internal Medicine and Pulmonary Disease, reviewed the miner's medical records and concluded that his death was unrelated to pneumoconiosis. Director's Exhibits 8, 18. Dr. Sherman opined that the miner died solely due to metastatic poorly differentiated lung cancer, an "extremely aggressive" type of cancer caused by smoking. Director's Exhibit 18. Dr. Sherman stated that the miner's pneumoconiosis was "stable for several years," and the "acute respiratory decompensation" he experienced prior to his death was caused by the development of the lung cancer. *Id.* Dr. Sherman concluded that while pneumoconiosis "added to [the miner's] symptoms, it did not hasten his death from complications of lung cancer." *Id.*

In finding that claimant did not meet her burden of proof, the administrative law judge found that Dr. Kraynak "treated [the miner] for a month," and had submitted two treatment notes. Decision and Order at 7. Based on these findings, the administrative law judge determined that Dr. Kraynak did not treat the miner for a sufficient time "to render his opinion worthy of greater weight." *Id.* The administrative law judge also accorded less weight to Dr. Kraynak's opinion because Dr. Kraynak was not a pulmonary specialist and because his opinion was not well-reasoned or supported. Additionally, the administrative law judge found that Dr. Prince's opinion that the miner's pneumoconiosis

² The physicians agreed that the miner's lung cancer was due to smoking and not pneumoconiosis. Director's Exhibits 8, 18; Claimant's Exhibits 1-6.

contributed to his loss of lung function and thus his death was not supported by the miner's treatment records. By contrast, the administrative law judge found that Dr. Sherman's opinion that pneumoconiosis did not hasten the miner's death was "more persuasive," and supported by the treatment records, which Dr. Sherman stated indicated that the miner's pneumoconiosis was stable prior to the onset of his severe lung cancer. Decision and Order at 8.

Claimant contends that the administrative law judge erred in failing to accord greater weight to Dr. Kraynak's opinion based on his status as the miner's treating physician. Claimant's contention lacks merit. The administrative law judge properly considered Dr. Kraynak's opinion in light of the duration and frequency of the treatment relationship, and based on the reasoning and documentation of the opinion. *See* 20 C.F.R. §718.104(d)(2),(3),(5). Based on the one-month treatment history, and "the scarcity of [Dr. Kraynak's] treatment notes," the administrative law judge was within his discretion to find that Dr. Kraynak's opinion did not merit greater weight as the opinion of a treating physician. Decision and Order at 7; *see* 20 C.F.R. §718.104(d); *see also Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). Additionally, the administrative law judge permissibly considered Dr. Kraynak's credentials and the quality of his medical documentation and reasoning in determining the weight to accord his opinion, and substantial evidence supports the administrative law judge's findings in this regard. *See* 20 C.F.R. §718.104(d)(5); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986). Therefore, we reject claimant's allegations of error in the weighing of Dr. Kraynak's opinion.

Claimant next contends that the administrative law judge did not adequately explain his findings, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), when he found that Dr. Prince's opinion was not as well-supported by the medical evidence of record as was Dr. Sherman's opinion. We disagree. The administrative law judge explained that the miner's treatment records, which made no mention of pneumoconiosis, but detailed the miner's treatment for chronic obstructive pulmonary disease due to tobacco abuse, and for lung cancer, did not support Dr. Prince's opinion that pneumoconiosis contributed to the miner's loss of lung function, but did support Dr. Sherman's opinion that the miner's pneumoconiosis was stable before he developed an aggressive cancer. Decision and Order at 8. It is within the administrative law judge's discretion to determine whether a physician's conclusions are adequately supported by their underlying documentation. *See Kertesz*, 788 F.2d at 163, 9 BLR at 2-8; *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985). Substantial evidence supports the administrative law judge's finding, and the Board is not authorized to reweigh the medical evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Therefore, we reject claimant's allegation of error.

Because the administrative law judge permissibly discounted claimant's medical evidence, we affirm his finding that claimant did not meet her burden to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). We therefore affirm the denial of benefits. *See Trumbo*, 17 BLR at 1-87. Consequently, we need not address claimant's argument that the administrative law judge erred in failing to make a finding as to the length of the miner's coal mine employment.³

³ The administrative law judge noted the stipulation of the Director, Office of Workers' Compensation Programs, to 4.65 years of coal mine employment, and that claimant alleged at least ten years, but he determined that the critical issue for determination was whether pneumoconiosis hastened the miner's death. Decision and Order at 3.

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge