

BRB No. 98-0612 BLA

CLARA MAE MASON)
(Widow of GEORGE DEAN MASON))
)
Claimant-)
Petitioner)
)
v.)
)
DIRECTOR, OFFICE OF)
WORKERS') DATE ISSUED:
COMPENSATION PROGRAMS,)
UNITED STATES DEPARTMENT)
OF LABOR) DECISION AND ORDER

Respondent

Appeal of the Decision and Order - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Rita Roppolo (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order - Denial of Benefits (95-BLA-

¹ Claimant is the widow of George Dean Mason, a miner who died on February 5, 1990, Director's Exhibit 9. The record indicates that the miner filed a claim on February 23, 1977. Director's Exhibit 21. This claim was denied by Administrative Law Judge W. Ralph Musgrove on August 7, 1985, who found that rebuttal of the interim presumption was established pursuant to 20 C.F.R.

1711) of Administrative Law Judge Daniel J. Roketenetz 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 administrative law judge credited the miner with twelve and one-half years of coal mine employment, in light of the concession by the Director, Office of Workers' Compensation Programs (the Director), and adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718, based on claimant's July 6, 1994 filing date. Similarly, based on the Director's concession, the administrative law judge found that claimant established the existence of pneumoconiosis arising out of the miner's coal mine employment, 20 C.F.R. §§718.202(a), 718.203(b). However, the administrative law judge found the medical evidence of record insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(1)-(3). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish that pneumoconiosis was a contributing cause of the miner's death. In response, the Director urges

§727.203(b)(2) and (b)(3) and that the miner had not established entitlement to benefits pursuant to 20 C.F.R. Part 410, Subpart D. In addition, Judge Musgrove found Blue Diamond Coal Company to be the responsible operator and dismissed A.B.D., Incorporated Shareholders Trust. This denial was affirmed by the Board on June 29, 1993. *Mason v. Blue Diamond Coal Co. and A.B.D., Incorporated Shareholders Liquidating Trust*, BRB Nos. 85-2070 BLA/A/B (June 29, 1993)(unpub.). Claimant filed an application for survivor's benefits on July 6, 1994, Director's Exhibit 1. The survivor's claim is the only claim before the Board.

affirmance of the administrative law judge's denial of benefits.²

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 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 a survivor's claim filed on or after January 1, 1982 only when claimant meets her burden of establishing that the miner's death was due to pneumoconiosis arising out of coal mine employment, where pneumoconiosis was a substantially contributing cause of death, where death was caused by complications of pneumoconiosis, or where complicated pneumoconiosis is established. 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Sumner v. Blue Diamond Coal Co.*, 12 BLR 1-74 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Moreover, the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that, pursuant to Section 718.205(c)(2), pneumoconiosis is considered to have substantially contributed to death if it hastened the miner's death. *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

² The parties do not challenge the administrative law judge's decision to credit the miner with twelve and one-half years of coal mine employment, his finding that the existence of pneumoconiosis arising out of coal mine employment was established, or his findings pursuant to 20 C.F.R. §718.205(c)(1), (c)(3). These findings are, therefore, affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

We affirm the administrative law judge's finding that the relevant medical opinion evidence is insufficient to establish that the pneumoconiosis hastened the miner's death pursuant to Section 718.205(c)(2). Initially, the administrative law judge found that the death certificate, signed by Dr. Iqbal, listed the cause of the miner's death as due to acute leukemia, sepsis and dehydration. Director's Exhibit 9. Thereafter, the administrative law judge set forth the medical opinions of Drs. Cronin, Iqbal and Patton,³ the medical opinions relevant to the issue of whether pneumoconiosis was a contributing cause of the miner's death pursuant to Section 718.205(c)(2). In weighing this evidence, the administrative law judge, within a reasonable exercise of his discretion as trier-of-fact, found the medical opinions of Drs. Cronin and Iqbal, that the miner's pneumoconiosis "could have" contributed to his death, were equivocal and, therefore, entitled to little probative weight pursuant to Section 718.205(c)(2). Decision and Order at 6; Director's Exhibit 19; Claimant's Exhibit 1; see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); see also *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). Additionally, the administrative law judge reasonably found that the opinion of Dr. Patton, that pneumoconiosis hastened the miner's death, was entitled to little probative weight inasmuch as the physician did not adequately explain the basis for his opinion or set forth the documentation upon which he relied in rendering this opinion. Decision and Order at 6; Director's Exhibit 19; see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); see also *Minton v. Director, OWCP*, 6 BLR 1-670 (1983).

³ Dr. Cronin stated that the miner suffered from acute leukemia and may also have had other problems such as coal workers' pneumoconiosis and that this could have contributed to the miner's demise. Director's Exhibit 19. However, Dr. Cronin further stated that the miner would have died regardless inasmuch as he elected not to be treated for his acute leukemia. *Id.* Dr. Iqbal, the physician who signed the death certificate, stated that he treated the miner for the five days encompassing his final hospitalization in February 1990, and that since his main concern was claimant's current illnesses, he was not aware of the miner's previous diagnoses. Claimant's Exhibit 1. However, Dr. Iqbal stated that the record contains letters from other physicians with strong evidence of the existence of pneumoconiosis and further opined that pneumoconiosis could have contributed to the miner's death, although he would have died regardless due to his acute leukemia, which was not being treated. *Id.* Lastly, Dr. Patton opined that the miner suffered from pneumoconiosis and that this pneumoconiosis complicated the acute myelogenous leukemia, from which he died, and thus hastened his death. Director's Exhibit 19.

Moreover, contrary to claimant's contention, the status of Drs. Cronin, Iqbal and Patton as physicians who treated the miner during his lifetime, does not inherently render these opinions well reasoned and documented. Rather, as in the instant case, the administrative law judge must weigh the medical evidence of record and determine if the medical opinions are well reasoned and documented, taking into consideration the physician's familiarity with the miner, as well as the bases and documentation for the physician's conclusions. See generally *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Revnack v. Director, OWCP*, 7 BLR 1-771 (1985). Inasmuch as the administrative law judge provided proper reasons for discrediting the opinions of Drs. Cronin, Iqbal and Patton, as discussed *supra*, we reject claimant's contention that the administrative law judge erred in failing to credit the medical opinions of Drs. Cronin, Iqbal and Patton, based on their status as treating physicians. See *Griffith, supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988). Similarly, we reject claimant's contention that the administrative law judge erred in assigning less weight to the opinions of Drs. Cronin, Iqbal and Patton because the physicians stated that claimant would have died anyway as a result of his leukemia, inasmuch as the doctor's statements do not preclude that pneumoconiosis hastened the miner's death. The burden to establish that pneumoconiosis hastened the miner's death rests upon claimant and the administrative law judge properly found that these opinions did not constitute credible evidence in support of claimant's burden. See *Griffith, supra*; *Brown, supra*. Thus, we affirm the administrative law judge's finding that the medical evidence of record is insufficient to establish that pneumoconiosis hastened the miner's death pursuant to Section 718.205(c)(2). 20 C.F.R. §718.205(c)(2); *Brown, supra*; see also *Griffith, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge