

BRB No. 95-2181 BLA

JESSIE KRUPA)
(Widow of MICHAEL KRUPA))
)
Claimant-Respondent)
)
v.)
)
BARNES & TUCKER COMPANY))
DATE ISSUED:)
Employer-Petitioner)
)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-In-Interest) DECISION and ORDER

Appeal of the Decision and Order of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Arnold D. Smorto (Smorto, Persio, Webb & McGill), Ebensburg, Pennsylvania, for claimant.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose), Johnstown, Pennsylvania, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (95-BLA-0465) of Administrative Law Judge Daniel L. Leland awarding 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). The administrative law judge credited

the miner with thirty years and ten months of qualifying coal mine employment and found that claimant¹ established that the miner's death was

¹Claimant is Jessie Krupa, widow of the miner, Michael Krupa. The miner's claim for benefits, which was filed on July 27, 1987, was denied on July 19, 1989, and the miner died on January 16, 1993. Director's Exhibits 7, 26. Claimant filed a survivor's claim for benefits on August 14, 1993. Director's Exhibit 1.

due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Claimant responds, urging affirmance, and the Director, Office of Workers' Compensation Programs (the Director), responds, declining to participate in the 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 Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer first contends that the administrative law judge erred in finding that the opinions of Drs. Goldblatt and Cottle corroborate the opinion of Drs. Ashcraft and Pisano. Employer's Brief at 5. The administrative law judge found that Drs. Ashcraft and Pisano, the autopsy prosectors, stated that the immediate cause of death was pulmonary emboli and that the miner's coal workers' pneumoconiosis had "exacerbated" his condition, which the administrative law judge interpreted as a finding that pneumoconiosis made a "substantial contribution" to the miner's death. Decision and Order at 7; Director's Exhibit 8. He further stated: "Their views that coal workers' pneumoconiosis contributed significantly to death are echoed by Dr. Goldblatt and Dr. Cottle, both expert pathologists." Decision and Order at 7.

Dr. Goldblatt, in a report dated May 27, 1994, diagnosed myocardial infarction, coronary artery atherosclerosis with severe stenosis of left circumflex artery, coal workers' pneumoconiosis, simple, severe, involving greater than fifty percent of parenchyma, acute thrombotic embolus of pulmonary artery, emphysema, centrilobular and focal dust, squamous cell carcinoma, and bronchopneumonia. He further stated that the myocardial infarction was due to myocardial hypoxia from the combined effects of severe coal workers' pneumoconiosis and several other diseases. He concluded that since hypoxia was the underlying mechanism of death, coal workers' pneumoconiosis was a major contributor. Director's Exhibit 20.

Dr. Cottle, in a report dated October 28, 1994, stated that the miner's death was due to myocardial ischemia due to severe coronary atheromatosis and that advanced bronchogenic carcinoma was a contributing factor. He further stated that the miner's coal workers' pneumoconiosis was a contributing cause of the miner's

death. Claimant's Exhibit 1. Both Dr. Cottle and Dr. Goldblatt restated their opinions in depositions. Claimant's Exhibits 2, 4.

Inasmuch as the opinions of Drs. Goldblatt and Cottle state that pneumoconiosis was a contributing cause of the miner's death, the administrative law judge permissibly found that the opinion of Drs. Ashcraft and Pisano is supported by the opinions of Drs. Goldblatt and Cottle. See *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); see also *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989). Thus, we reject employer's contention.

Employer next contends that the administrative law judge erred in rejecting the opinions of Drs. Naeye, Bush, Mendelow, Griffin, Rodman, Hurwitz, and Michos, all of whom stated that pneumoconiosis played no part in the miner's death, because they relied on clinical information showing that, prior to his death, the miner had normal pulmonary function. Employer's Brief at 6; Director's Exhibits 10, 11, 21; Employer's Exhibits 1-3. Upon considering the medical opinions, the administrative law judge gave little weight to Dr. Michos' opinion because he is not a pathologist and "therefore lacks the expertise on the cause of death that a pathologist would possess." Decision and Order at 7; Director's Exhibit 11. The administrative law judge accorded great weight to the opinion of Drs. Ashcraft and Pisano because "they were the only pathologists who made a gross examination of the decedent's body" and because they "observed how widespread the coal workers' pneumoconiosis had become by precisely describing the extent of the pneumoconiotic macules." Decision and Order at 7; Director's Exhibit 8.

The administrative law judge next discussed how Drs. Naeye, Bush, Mendelow, Griffin, and Rodman relied "very heavily" on evidence from the miner's claim that the miner's pneumoconiosis was too mild to have resulted in any significant pulmonary impairment. Decision and Order at 7; Director's Exhibits 10, 21; Employer's Exhibits 1, 2. The administrative law judge noted that this is a widow's claim, and that because the most recent evidence from the miner's claim was from January 1989 and the miner did not die until January 1993, "it is possible" that his pneumoconiosis worsened in the four years prior to his death.² Decision and Order at 7. The administrative law judge then credited "the opinions of the

²That pneumoconiosis is a progressive disease has been generally recognized. See *Plesh v. Director, OWCP*, 71 F.3d 103, 13 BLR 2-100 (3d Cir. 1995), and cases cited therein; see also *Freeman United Coal Mining Co. v. Hilliard*, 65 F.3d 667, 19 BLR 2-282 (7th Cir. 1995).

prosecutors, Dr. Ashcraft and Dr. Pisano, as corroborated by Dr. Goldblatt and Dr. Cottle, over the opinions of Dr. Naeye, Dr. Bush, Dr. Mendelow, Dr. Griffin, and Dr. Rodman." Decision and Order at 7-8.

Inasmuch as the administrative law judge need not accept the opinion of any particular expert but must weigh all the evidence and draw his own conclusions and inferences, see *Lafferty, supra*; *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987), and may assign determinative weight to the opinion of the autopsy prosecutor, see *Urgolites v. BethEnergy Mines, Inc.*, 17 BLR 1-20 (1992); *Gruller v. Bethenergy Mines, Inc.*, 16 BLR 1-3 (1991), we reject employer's argument as a request to reweigh the evidence and affirm the administrative law judge's weighing of the medical opinion evidence pursuant to Section 718.205 and the award of benefits.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge