

BRB No. 96-0568 BLA

JANE SUTTON)
(Widow of RAY SUTTON))
)
Claimant-Petitioner)
)
v.)
) DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent) DECISION and ORDER

Appeal of the Decision and Order of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Jean Zeiler (United Mine Workers of America), Belle Vernon, Pennsylvania, for claimant.

Elizabeth A. Goodman (J. Davitt McAteer, Acting 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: SMITH, BROWN, and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (95-BLA-0790) of Administrative Law Judge Michael P. Lesniak denying benefits on a claim filed pursuant to the

¹Claimant is Jane Sutton, the miner's widow, who filed a survivor's claim for benefits on May 11, 1993. Director's Exhibit 1. The miner, Ray Sutton, filed a claim for benefits on August 15, 1984, was awarded benefits on February 8, 1985, and

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 found that the miner had at least fifteen years of qualifying coal mine employment and that claimant failed to establish that the miner's death was

died on February 12, 1993. Director's Exhibits 3, 38.

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

On appeal, claimant contends that the administrative law judge erred in crediting Dr. Spagnolo's opinion and in weighing the evidence of record. Claimant's Brief at 2-5. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance.

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).

Claimant contends that the administrative law judge erred in crediting Dr. Spagnolo's opinion because it was based on a finding that claimant did not have pneumoconiosis and the Director stipulated to this issue. Claimant's Brief at 3. However, in his report of March 5, 1994, Dr. Spagnolo stated:

Although you indicated that the presence of a pneumoconiosis was established in Mr. Sutton, its presence in my opinion after reviewing all the medical records had not caused any clinically significant alteration in lung function. Therefor its presence was not a factor in Mr. Sutton's death.

The record is very clear regarding the presence of the severe coronary artery disease, heart failure and terminal metastatic cancer which ultimately caused his death to occur on February 16, 1993. There is no objective medical evidence that a pneumoconiosis was a substantially contributing cause or factor leading to Mr. Sutton's death. Nor was his death cause [sic] by a complication of a pneumoconiosis.

Director's Exhibit 34.

Thus, contrary to claimant's contention, Dr. Spagnolo acknowledged that the miner had established the existence of pneumoconiosis but found that the objective evidence did not indicate that the pneumoconiosis altered the miner's lung function. Based on his belief that the miner's lung disease had not altered the miner's lung function, Dr. Spagnolo concluded that pneumoconiosis was not a factor in the miner's death. Director's Exhibit 34.

The administrative law judge found Dr. Spagnolo's opinion to be "more convincing than the opinions of Drs. Goldman and Ternes" and "well-reasoned and documented." Decision and Order at 7. He also noted that Dr. Spagnolo reviewed the entire medical record and based his conclusions on the objective diagnostic testing in the record. *Id.*

Inasmuch as it is within the administrative law judge's discretion to determine whether a physician's opinion is sufficiently reasoned and documented, 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); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985), and to weigh the evidence and draw his own conclusions and inferences, see *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989), we affirm the administrative law judge's weighing of Dr. Spagnolo's opinion. Decision and Order at 7; Director's Exhibit 34; see *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984).

Claimant next contends that the opinions of two treating physicians, Drs. Ternes and Goldman, should have been accorded additional weight over the opinion of Dr. Spagnolo, a non-examining physician. Claimant's Brief at 4-5. In a letter dated April 13, 1993, Dr. Ternes stated that the miner's condition was affected by his "underlying pulmonary and cardiac disease." Director's Exhibit 9. In a letter dated December 15, 1993, Dr. Ternes stated:

. . .while his black lung disease may have been a definite factor, no specific testing was done because of other coincidental and more overwhelming and urgent problems. That, however, in no way negates the fact that his black lung disease could have been a complicating factor. It can not be proven and it can not be disproven.

Director's Exhibit 10.

The administrative law judge stated: "I find Dr. Ternes' statement that the Miner's black lung disease *could* have been a complicating factor in his death to be too ambiguous to establish death due to pneumoconiosis under the provisions of the Act. Therefore, his opinion should be given less weight." Decision and Order at 7.

Inasmuch as the administrative law judge may accord less weight to opinions which he determines are equivocal, see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986); see also *Lucostic, supra*, we affirm the administrative

law judge's weighing of Dr. Ternes' opinion. Decision and Order at 7, Director's Exhibits 9, 10.

Dr. Goldman, in a letter dated May 23, 1994, stated:

I recently reviewed the hospital chart of Ray Sutton at the request of his widow, Jane Sutton[.] Although the diagnosis of Coal Workers' Pneumoconiosis did not appear on his death certificate. It did appear as a final diagnosis on the hospital record and there was evidence of respiratory distress and radiographic changes of pneumoconiosis noted. I would consider this a contributing factor in his death.

Claimant's Exhibit 1.

The administrative law judge stated: "I find that Dr. Goldman has not adequately explained the connection between 'evidence of respiratory distress' and the presence of pneumoconiosis and its effect on the Miner's ultimate demise from cancer. Therefore, Dr. Goldman's opinion should be given less weight." Decision and Order at 7.

Inasmuch as the administrative law judge may reject an opinion where he finds that the physician failed to explain the diagnosis adequately, *see Clark, supra*, and may, but is not required to, credit the opinion of a treating physician, *see Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *cf. Evosevich v. Consolidation Coal Co.*, 789 F.2d 1021, 9 BLR 2-10 (3d Cir. 1986), we affirm the administrative law judge's weighing of Dr. Goldman's opinion and the administrative law judge's finding that claimant failed to establish death due to pneumoconiosis pursuant to Section 718.205(c).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge