

BRB No. 99-1088 BLA

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| BEATRICE SCHLEGEL |) | |
| (Widow of ROY SCHLEGEL) |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| EARL BUSH COAL 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 Awarding Benefits of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

David Rattigan (Williamson, Friedberg & Jones), Pottsville, Pennsylvania, for claimant.

Ross A. Carrozza (Marshall, Dennehey, Warner, Coleman & Goggin), Scranton, Pennsylvania.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (98-BLA-0656) of Administrative Law Judge Ainsworth H. Brown 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).¹ The administrative law judge found that employer conceded the

¹ Claimant, Beatrice Schlegel, is the widow of the miner Roy Schlegel, who died on November 23, 1994. The death certificate lists the cause of death as pneumoconiosis with no other contributing causes or contributing factors listed. Director's Exhibit 8. The miner had

existence of simple coal workers pneumoconiosis arising out of coal mine employment, Decision and Order at 2. The administrative law judge further found that the evidence of record established that the miner suffered from complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Finally, the administrative law judge concluded that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, survivor's benefits were awarded.

On appeal, employer contends that the administrative law judge erred in concluding that the miner suffered from complicated pneumoconiosis pursuant to Section 718.304. Employer further contends that the administrative law judge erred in concluding that claimant established that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Claimant, in response, urges that the administrative law judge's Decision and Order be affirmed. The Director, Office of Workers' Compensation Programs (the Director), has not filed a brief in this appeal.²

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

Employer asserts that the administrative law judge erred in finding that claimant established the presence of complicated pneumoconiosis pursuant to Section 718.304(c). Specifically, employer asserts that the administrative law judge impermissibly relied upon diagnoses rendered by the lesser-qualified physicians in concluding that the miner suffered

previously filed two claims which were finally denied, Director's Exhibits 37, 38. Neither claim is before the Board at this time.

² Employer has not challenged the administrative law judge's determination that employer conceded the existence of simple pneumoconiosis arising out of coal mine employment. Decision and Order at 2; *see* Director's Exhibit 39. Accordingly, the finding is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

from complicated pneumoconiosis.

In order to establish invocation of the irrebutable presumption at Section 718.304, an administrative law judge must consider all relevant evidence found at each subsection pursuant to Section 718.304(a)-(c), and then weigh together such evidence prior to finding the presumption invoked. *See Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir.1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-131 (1991)(*en banc*). If the administrative law judge determines that the weight of such evidence establishes the presence of complicated pneumoconiosis, then the irrebutable presumption is invoked. *See* Section 718.304.

In the instant case, the administrative law judge found that claimant established that the miner suffered from complicated pneumoconiosis based primarily on the medical opinion of Dr. Bellissimo who reviewed the CT scan of April 21, 1994, and concluded that the scan was supportive of a finding of complicated pneumoconiosis. Director's Exhibit 9. The administrative law judge further recognized, that while Dr. Laucks and Dr. Lautin, both B-readers,³ reviewed the same evidence as Dr. Bellissimo, they concluded that the miner did not suffer from complicated pneumoconiosis, Employer's Exhibits 2, 3. The administrative law judge, however, found that the opinions of these physicians were entitled to less weight as they failed to "fully address the analysis provided by Dr. Bellissimo." Decision and Order at 5. Employer concedes that, while the opinion of Dr. Bellissimo supports a conclusion that the miner suffered from complicated pneumoconiosis, the contrary opinions of Drs. Laucks and Lautin are entitled to greater deference based on their superior credentials.

Contrary to employer's contention, the administrative law judge is not required to defer to physicians with superior qualifications. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988);

³ A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Company, Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

McMath v. Director, OWCP, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Corp.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). In the instant case, the administrative law judge has reviewed all the relevant evidence and has explained the basis for his conclusion that the miner suffered from complicated pneumoconiosis, *i.e.*, that the conclusions of Dr. Bellissimo were based on the most recent evidence of record and showed the progression of the miner's condition from earlier medical reports. Decision and Order at 5; *see Wilt v. Wolverine Mining Company*, 14 BLR 1-70 (1990); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986). Accordingly, we affirm, as supported by substantial evidence, the administrative law judge's conclusion that claimant established the existence of complicated pneumoconiosis pursuant to Section 718.304. *See Melnick, supra; Lester, supra.*

In a survivor's claim, once the presence of complicated pneumoconiosis is established, claimant is entitled to the irrebutable presumption that the miner's death was due to pneumoconiosis pursuant to Section 718.304. *See Sumner v. Blue Diamond Coal Co.*, 12 BLR 1-74 (1988). Inasmuch as claimant has established the presence of complicated pneumoconiosis as well as demonstrating that the miner's disease arose out of coal mine employment, *see fn.2, supra*, we must affirm the award of survivor's benefits.⁴

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

⁴ In view of our affirmance of the award of benefits based on the finding of complicated pneumoconiosis, we need not address employer's specific assertions regarding the administrative law judge's findings that claimant established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), *see Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989), inasmuch as such findings are moot. *See generally Coen v. Director, OWCP*, 7 BLR 1-30 (1984).

MALCOLM D. NELSON, Acting
Administrative Appeals Judge