

BRB No. 01-0961 BLA

ETTA E. LAMBRIGHT)
(Widow of ALONZO LAMBRIGHT))
)
Claimant-Petitioner)
)
v.)
)
BISHOP COAL COMPANY,)
INCORPORATED)
)
and)
)
EMPLOYER SERVICES CORPORATION)
)
Employer/Carrier-Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Etta E. Lambright, Bishop, Virginia, *pro se*.

Kathy L. Snyder (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order Denying

¹ Claimant, Etta E. Lambright, is the widow of Alonzo Lambright, the miner, who died on January 18, 1996. Director's Exhibit 7. The miner filed his first application for benefits on July 15, 1980, which the district director denied on April 28, 1981. Director's

Benefits (00-BLA-0922) of Administrative Law Judge Alice M. Craft on a request for modification of the denial of 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).² Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), but failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The administrative law judge found further that claimant failed to establish the existence of complicated pneumoconiosis, and was not, therefore, entitled to invocation of the irrebuttable presumption of death due to pneumoconiosis set forth at 30 U.S.C. §921(c)(3), as implemented by the regulation at 20 C.F.R. §718.304.³ Consequently, the administrative law

Exhibit 105. The miner took no further action on this claim, and subsequently, filed a duplicate application for benefits on October 3, 1983, which was finally denied in a Decision and Order rendered by Administrative Law Judge Ben L. O'Brien on April 12, 1989 and affirmed by the Benefits Review Board on April 30, 1991, *Lambright v. Bishop Coal Co.*, BRB No. 89-1494 BLA (Apr. 30, 1991) (unpub.); Director's Exhibit 105. The miner died on January 18, 1996. Director's Exhibit 7.

Claimant, the miner's widow, filed a survivor's claim for benefits on February 7, 1996. Director's Exhibit 1. After the district director denied the claim on April 19, 1996, claimant filed a petition for modification pursuant to 20 C.F.R. §725.310 (2000) on March 13, 1997, which the district director denied on September 24, 1997. Director's Exhibits 58, 59, 66. Similarly, claimant's modification request dated October 17, 1997 was also denied on February 2, 1998 and January 22, 1999. Director's Exhibits 67, 69, 94. Subsequently, claimant requested reconsideration on January 18, 2000 of the January 1999 denial. Director's Exhibit 97. Because claimant's request was within one year of the previous denial, the district director treated claimant's request for reconsideration as a petition for modification; consequently, claimant submitted additional medical evidence. Director's Exhibits 98, 99. After the district director denied modification on March 13, 2000, claimant requested a formal hearing with the Office of Administrative Law Judges. Director's Exhibits 101, 103.

² The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³ Section 718.304 provides in relevant part:

There is an irrebuttable presumption that a miner is totally disabled due to

pneumoconiosis ..., if such miner is suffering or suffered from a chronic dust disease of the lung which:

- (a) When diagnosed by chest X-ray ... yields one or more large opacities (greater than 1 centimeter in diameter) and would be classified in Category A, B, or C...; or
- (b) When diagnosed by biopsy or autopsy, yields massive lesions in the lung; or
- (c) When diagnosed by means other than those specified in paragraphs (a) and (b) of this section, would be a condition which could reasonably be expected to yield the results described in paragraph (a) or (b) of this section had diagnosis been made as therein described: *Provided, however,* That any diagnosis made under this paragraph shall accord with acceptable medical procedures.

judge determined that because claimant failed to establish a mistake in a determination of fact, she failed to demonstrate a basis for modification pursuant to 20 C.F.R. 725.310 (2000). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, as party-in-interest, has filed a letter indicating that he is not participating in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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, claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). For survivor's claims filed on or after January 1, 1982, the miner's death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304 is

20 C.F.R. §718.304 [emphasis in original], implementing 30 U.S.C. §921(c)(3); see *Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 256, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B. Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, BLR (4th Cir. 1999); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*).

applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993); *accord Bradberry v. Director, OWCP*, 117 F.3d 1361, 21 BLR 2-166 (11th Cir. 1997); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

After consideration of the Decision and Order, the arguments on appeal, and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial evidence, contains no reversible error and must, therefore, be affirmed. The administrative law judge, within a proper exercise of her discretion, determined that the miner suffered from simple pneumoconiosis but not complicated pneumoconiosis based on the biopsy results, the credible physicians' opinions, the miner's medical history, and the x-ray and CT scan evidence. See *Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 256, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B. Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, BLR (4th Cir. 1999); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*).⁴ More specifically, the administrative law judge properly found that the only x-ray of record that was read as positive for complicated pneumoconiosis was not reliable because the physician who found it positive for complicated pneumoconiosis also opined that carcinoma was an alternate, possible diagnosis for the lesion evident on the x-ray and all of the post-1987 x-ray films as well as the CT scans were interpreted as negative for the existence of even *simple* coal workers' pneumoconiosis. See

⁴ Relevant to Section 718.304, the record contains one chest x-ray interpretation that was read as positive for the existence of complicated pneumoconiosis. Of the ninety-eight x-ray interpretations of record, one film dated June 24, 1987 was read by Dr. Bassali, who found a size A large opacity, but listed carcinoma as an alternate possible diagnosis. Director's Exhibit 105. Similarly, all of the physicians of record agreed that the miner had simple coal workers' pneumoconiosis, but only Dr. Pullins, a Board-certified pathologist, found substantial evidence of complicated pneumoconiosis after reviewing the miner's surgical pathology report and slides on September 24, 1998. Director's Exhibit 85. In a report dated March 8, 2000, Dr. Naeye opined that "the resulting confluent mass cannot be classified as solely [coal workers' pneumoconiosis]," and as such, did not meet the requirements for complicated pneumoconiosis. Director's Exhibit 100. Dr. Jarboe agreed with Dr. Naeye and concluded that the miner's "advancing carcinoma simply engulfed and incorporated the coal macules, perhaps appearing as if there were [sic] complicated pneumoconiosis." Employer's Exhibit 3. On October 23, 2000, Dr. Morgan opined that the miner's lung cancer was not the result of a scar induced by complicated pneumoconiosis. Employer's Exhibit 4.

Scarbro, supra; Blankenship, supra; Gray v. SLC Coal Co., 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999) (x-ray evidence of opacities larger than one centimeter does not automatically trigger irrebuttable presumption when conflicting evidence exists); Director's Exhibits 13-55, 57, 65, 83, 84, 87, 88, 90-92, 105. In addition, the administrative law judge rationally found that Dr. Pullins's diagnosis of complicated pneumoconiosis was less persuasive than Dr. Naeye's because Dr. Pullins stated that he had no specialized expertise in the area of coal workers' pneumoconiosis, contrary to the demonstrated medical expertise of Dr. Naeye, a Board-certified pathologist, who had an extensive record of research in coal workers' pneumoconiosis cases and frequently rendered consulting opinions. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985); Decision and Order at 27-28. We, therefore, affirm the administrative law judge's determination that the weight of the evidence demonstrated that the mass found in the miner's right upper lung was due to cancer rather than complicated pneumoconiosis as this determination is rational and supported by substantial evidence. *See* 20 C.F.R. §718.304; *Scarbro, supra; Blankenship, supra; Melnick, supra*. Accordingly, we affirm the administrative law judge's finding that complicated pneumoconiosis was not established in this case and, therefore, claimant was not entitled to the irrebuttable presumption of death due to pneumoconiosis at Section 718.304. 20 C.F.R. §718.304; 30 U.S.C. §921(c)(3). *See* 20 C.F.R. §718.205(c)(3).

Turning to the remainder of Section 718.205(c), the administrative law judge found that the medical opinions of record failed to establish that pneumoconiosis caused, substantially contributed to, or hastened the miner's death. A review of the record reveals that there were ten physicians' opinions which addressed whether pneumoconiosis hastened the miner's death. Dr. Schor, the miner's treating oncologist, completed the miner's death certificate on January 18, 1996 and listed metastatic lung cancer as an immediate cause of death due to or a consequence of coal workers' pneumoconiosis. Director's Exhibit 7. Additionally, Dr. Schor rendered a report on September 28, 1998 in which he diagnosed metastatic non-small cell lung cancer and opined that the presence of coal workers' pneumoconiosis was a factor that hastened the miner's death. Director's Exhibit 85. Dr. Pullins concluded that the miner's adenocarcinoma arose from an area of fibroanthracotic scarring, and consequently, that the miner's lung cancer was caused by complications of complicated pneumoconiosis resulting in death, but added that he was "unaware of any follow-up information on [the miner] and I do not know the circumstances of his death." Director's Exhibit 85. After reviewing the biopsy slides, Dr. Jones stated that the miner's coal workers' pneumoconiosis significantly impaired his respiratory capacity and weakened his capacity to survive, and as such, significantly complicated his health, thereby leading to death. Director's Exhibit 99. To the contrary, however, based on their reviews of the medical evidence of record, Drs. Naeye, Bush, Jarboe, Morgan, Castle, Fino, and Hutchins opined that the miner's death was not caused by, contributed to, or hastened in any way by the underlying, simple coal workers' pneumoconiosis that was present. Director's Exhibits

93, 96, 100; Employer's Exhibits 1-5.

We affirm the administrative law judge's determination that claimant failed to establish that pneumoconiosis substantially contributed to the miner's demise inasmuch as this determination is rational, contains no reversible error, and is supported by substantial evidence. The administrative law judge permissibly discounted the opinions of Drs. Schor, Pullins, and Jones, because these physicians failed to provide any reasoning, documentation, or explanation for the basis of their opinions, and as such, the administrative law judge found that their opinions were conclusory. *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, BLR (4th Cir. 2000) (bald conclusion that pneumoconiosis contributed to miner's death without some reasoning is insufficient to establish that pneumoconiosis hastened death); *Lango v. Director, OWCP*, 104 F.3d 573, 577, 21 BLR 2-12, 2-20 (3d Cir. 1997); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Lucostic v. U. S. Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 28. The administrative law judge, within a proper exercise of her discretion, found that the opinions of Drs. Naeye, Bush, Jarboe, Morgan, Castle, Fino, and Hutchins, that the miner's death was due to lung cancer caused by cigarette smoking, were entitled to dispositive weight because these physicians' opinions contained detailed explanations, referred to supportive medical literature, and were consistent with the entirety of the record evidence, particularly the objective evidence administered prior to the miner's death demonstrating the absence of a significant pulmonary impairment due to pneumoconiosis. *See Trumbo, supra*; *Clark, supra*; *Lucostic, supra*; *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984). Thus, because as the administrative law judge's analysis constitutes a proper evaluation of the medical evidence, and is rational, her finding that death due to pneumoconiosis was not established at Section 718.205(c), is affirmed. *See Shuff, supra*.

Accordingly, the administrative law judge properly found that claimant failed to satisfy her burden of affirmatively establishing the existence of complicated pneumoconiosis under Section 718.304 or that pneumoconiosis hastened the miner's death under Section 718.205(c). *See Shuff, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley, supra*. Consequently, we affirm the administrative law judge's finding that claimant failed to demonstrate a mistake in a determination of fact, and thus, failed to establish a basis for modification.⁵ *See O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 255, 92 S. Ct.

⁵ We affirm the administrative law judge's determination that, because this is a survivor's claim, the sole basis to demonstrate modification was a mistake in a determination of fact inasmuch as there cannot be a change in the deceased miner's condition. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989); *see also O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 255, 92 S. Ct. 405, 407 (1971); Decision and Order at 3 n.2.

405, 407 (1971); *Jessee v. Director, OWCP*, 5 F.3d 723, 725, 18 BLR 2-26, 2-28 (4th Cir. 1993).

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge