

BRB No. 03-0764 BLA

TERESA GRUBER )  
(Widow of GLEN GRUBER) )  
 )  
 Claimant-Respondent )  
 )  
 v. )  
 )  
 BELTRAMI ENTERPRISES, )  
 INCORPORATED )  
 )  
 and )  
 ) DATE ISSUED: 07/23/2004  
 LACKAWANNA CASUALTY COMPANY )  
 )  
 Employer/Carrier- )  
 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 Robert D. Kaplan,  
Administrative Law Judge, United States Department of Labor.

John G. Swatkoski (Meyer and Swatkoski Associates), Kingston,  
Pennsylvania, for claimant.

William E. Wyatt, Jr. and John J. Notarianni (Fine, Wyatt and Carey, P.C.),  
Scranton, Pennsylvania, for employer/carrier.

BEFORE: DOLDER, Chief Administrative Appeals Judge, SMITH and  
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (“employer”) appeals the Decision and Order Awarding Benefits  
(02-BLA-5057) of Administrative Law Judge Robert D. Kaplan 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).<sup>1</sup> The administrative law judge noted that employer conceded the existence of pneumoconiosis arising out of coal mine employment, and the administrative law judge found that the parties' stipulation to twenty-seven years of coal mine employment was supported by the record.<sup>2</sup> The administrative law judge found the evidence sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), and awarded benefits.

On appeal, employer asserts that the administrative law judge erred in crediting and weighing the medical opinion evidence. In a letter, the Director, Office of Workers' Compensation Programs, indicated that he will not submit a brief in this appeal. Claimant responds to employer's appeal, urging affirmance of the administrative law judge's award of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable 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).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death.<sup>3</sup> 20 C.F.R. §718.205(c). *See* 20 C.F.R. §§718.1, 718.202, 718.203,

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<sup>1</sup> Claimant is Teresa Gruber, widow of Glen Gruber, the miner. Claimant's Exhibit 3. During his life, the miner was receiving Black Lung Benefits paid by employer. Director's Exhibit 18; Decision and Order at 3.

<sup>2</sup> 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(2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>3</sup> 20 C.F.R. §718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or

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). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. See 20 C.F.R. §718.205(c)(5); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

After consideration of the administrative law judge's findings, the arguments raised on appeal, and the evidence of record, we hold that the administrative law judge's findings are supported by substantial evidence and are therefore affirmed. The administrative law judge must evaluate the evidence and determine the credibility of the medical opinions, see *Carson v. Westmoreland Coal Co.*, 19 BLR 1-16 (1994); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), and he must assess the evidence and determine whether each party has met their burden of proof, *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). The Board may not re-weigh the evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985). Employer's brief constitutes little more than a request to reweigh the evidence. We hold that the administrative law judge has adequately considered the quality and the quantity of the medical opinion evidence regarding the cause of the miner's death, see Decision and Order at 12, and that the administrative law judge has, within a proper exercise of his discretion, permissibly found the weight of the medical opinion evidence sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). See *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). We, therefore, affirm the administrative law judge's award of benefits.

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(2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or

(3) Where the presumption set forth at §718.304 is applicable.

...

(5) Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death.

20 C.F.R. §718.205(c)(1)-(3), (5).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge