

BRB No. 04-0121 BLA

GLORIA D. DeROSA)
(Widow of JOHN SAM DeROSA))
)
 Claimant-Petitioner)
)
 v.)
)
 BELTRAMI ENTERPRISES,) DATE ISSUED: 07/19/2004
 INCORPORATED)
)
 and)
)
 LACKAWANNA CASUALTY COMPANY)
)
 Employer/Carrier-)
 Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan,
Administrative Law Judge, United States Department of Labor.

Harry T. Coleman, Scranton, Pennsylvania, for claimant.

Ross A. Carozza (Marshall, Dennehy, Warner, Coleman & Goggin),
Scranton, Pennsylvania, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Benefits (2003-BLA-5226) of Administrative Law Judge Robert D. Kaplan rendered 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). Based on the filing date of November 5, 2001, the administrative law judge adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718. Director's Exhibit 2. The administrative law judge accepted the concessions of employer to the existence of pneumoconiosis and a seventeen year coal mine employment history, but found the evidence of record insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence failed to establish death due to pneumoconiosis. Specifically, claimant contends that the administrative law judge erred in rejecting the opinion of Dr. Goldberg, that the miner's death was due to pneumoconiosis, and the amended death certificate signed by Dr. Fasciana, the miner's treating physician, listing anthracosilicosis as a cause of death. Employer responds, urging affirmance of the administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs, (the Director) has not responded to this 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 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 suffered from pneumoconiosis, that the 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); *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). For survivor's claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis 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 applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing

¹ Claimant is the widow of the miner, John Sam DeRosa, who died on October 19, 2001. Director's Exhibits 4, 5.

cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. In considering the evidence, the administrative law judge found that there were two medical opinions addressing the cause of death. The administrative law judge credited, as reasoned and documented, Dr. Dittman's opinion that the miner died due to lung cancer that had metastasized to his brain and that pneumoconiosis had never been shown to cause cancer. Decision and Order at 7; Employer's Exhibit 1; Director's Exhibit 22. The administrative law judge stated that Dr. Dittman had reviewed the records of the miner's medical treatment with Drs. Fasciana, Goldberg, Meyer, and Natividad as well as treatment at Geisinger Wyoming Valley Hospital, and that these records supported Dr. Dittman's finding. This was rational. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); Employer's Exhibit 1.

Turning to Dr. Goldberg's opinion, the administrative law judge accorded it less weight because he found Dr. Goldberg's opinion that exposure to silica "may have very well contributed...to his [the miner's] death," Claimant's Exhibit 1, was equivocal and speculative. This was rational. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985). The administrative law judge further found that, even if Dr. Goldberg's opinion had been clear, it did not provide any reasoning or documentation supporting a finding that pneumoconiosis substantially contributed to the miner's death. This was rational. *Clark*, 12 BLR 1-155; Decision and Order at 8.

The administrative law judge also found that the amended death certificate, signed by Dr. Fasciana, the miner's treating physician, listing both lung cancer and anthracosilicosis as causes of death, was not sufficient, in and of itself, to establish that the miner's death was due to pneumoconiosis.² This was proper. Director's Exhibit 5; *see Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997)(the mere fact that a death certificate refers to pneumoconiosis cannot be viewed as a reasoned medical finding); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988). Nor, contrary to claimant's contention, was the administrative law judge required to give greater weight to the death certificate because it was completed by the miner's treating physician. The administrative law judge stated that while Dr. Fasciana had been the miner's treating

² The original death certificate signed by Dr. Fasciana listed lung cancer only as a cause of death. Director's Exhibit 4.

physician since January 1997, Dr. Fasciana's treatment records did not support his conclusion that pneumoconiosis was a cause of the miner's death. 20 C.F.R. §718.104(d)(5); *Lango*, 104 F.3d 573, 21 BLR 2-12; see *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 22 BLR 2-467 (3d Cir. 2002).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge