

BRB No. 07-0925 BLA

E. B.	)	
(Widow of W. B.)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SANDY FORK MINING COMPANY	)	DATE ISSUED: 07/29/2008
	)	
Employer-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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Rodney E. Buttermore, Jr. (Buttermore & Boggs), Harlan, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (2005-BLA-05845) of Administrative Law Judge Donald W. Mosser (the administrative law judge) rendered on 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). The administrative law judge credited the miner with thirty-two years of coal mine employment and adjudicated this claim, filed on March 1, 2004, pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1)-(4) and 718.203(b), but also

found that it was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).<sup>1</sup> Accordingly, the administrative law judge denied benefits.

On appeal, claimant asserts at Section 718.205(c)(2), (5), that the administrative law judge should have credited the opinions of Drs. Yumang and Cornett, the miner's treating physicians, who found that pneumoconiosis hastened the miner's death.<sup>2</sup> Specifically, claimant asserts that the administrative law judge should have accorded substantial weight to the opinion of Dr. Yumang, because he was a treating physician. Employer responds, arguing that the administrative law judge's Decision and Order denying benefits should be affirmed. The Director, Office of Workers' Compensation Programs, has declined to respond to this appeal.

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.<sup>3</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. Death will be considered 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, where the miner's death was caused by complications of pneumoconiosis, or where the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993);

---

<sup>1</sup> The miner died on September 8, 2000. The death certificate, signed by Dr. Yumang, listed cardiopulmonary arrest, due to or as a consequence of acute respiratory failure, acute pulmonary edema/chronic obstructive lung disease, and end stage coronary artery disease, as the cause of death. Congestive heart failure and diabetes mellitus were listed as other significant contributing factors. Director's Exhibit 12.

<sup>2</sup> There is no evidence in the record to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)(1) or that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)(3) because complicated pneumoconiosis was established.

<sup>3</sup> The law of the United States Court of Appeals for the Sixth Circuit is applicable, as the miner was employed in the coal mining industry in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

*Neeley v. Director, OWCP*, 11 BLR 1-85, 1-86 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Pneumoconiosis is a “substantially contributing cause” of the miner’s death if it hastened the miner’s death. 20 C.F.R. §718.205(c)(5); *see also Griffith v. Director, OWCP*, 868 F.2d 847, 12 BLR 2-185 (6th Cir. 1989).

Claimant first argues that the administrative law judge erred in not finding that the miner’s death was hastened by pneumoconiosis, based on the opinion of Dr. Yumang, the miner’s treating physician. Specifically, claimant contends that the administrative law judge should have accorded greater weight to the opinion of Dr. Yumang because he was the miner’s treating physician.

In considering the medical opinion evidence on death causation at Section 718.205(c)(2), (5), the administrative law judge noted that Dr. Yumang opined that the miner’s death was hastened by pneumoconiosis. The administrative law judge, however, noted that Dr. Fino opined that the miner’s death was due to end stage coronary artery disease causing pulmonary edema, and that Dr. Dahhan opined that death was due to congestive heart failure secondary to coronary artery disease. Further, the administrative law judge noted that the miner’s hospitalization and treatment records diagnosed congestive heart failure, coronary artery disease, and diabetes mellitus. The administrative law judge also noted that while other hospital and treatment records noted the miner’s hospitalization up to his death, they failed to discuss the actual cause of the miner’s death or whether pneumoconiosis may have hastened death.

In weighing this evidence, the administrative law judge concluded that, even though Dr. Yumang was the miner’s treating physician, his opinion was not credible because he failed to explain how pneumoconiosis hastened the miner’s death. The administrative law judge noted that Dr. Yumang’s opinion on death causation was unreasoned because it consisted of a one paragraph statement that the miner’s death was hastened by his pneumoconiosis, without any discussion of clinical findings, observations, facts or other data on which he based his diagnosis. Director’s Exhibit 17. By contrast, the administrative law judge found that the report of Dr. Fino, that the miner’s death was due to end stage coronary artery disease and that pneumoconiosis did not hasten death by coronary artery disease, and which was supported by Dr. Dahhan’s opinion,<sup>4</sup> was more convincing as it was better documented.<sup>5</sup> *See Clark v. Karst-Robbins*

---

<sup>4</sup> Based on his review of numerous treatment reports, Dr. Dahhan concluded that the miner’s death was not related to the inhalation of coal dust, but was due to severe refractory congestive heart failure secondary to coronary artery disease, with no evidence of cor pulmonale. Dr. Dahhan concluded that the miner’s death would have occurred in the same time and manner regardless of his coal mine employment. Employer’s Exhibit 1.

<sup>5</sup> Dr. Fino’s opinion is based on his review of numerous hospitalization and

*Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). Consequently, the administrative law judge properly accorded greater weight to Dr. Fino's opinion.

Further, contrary to claimant's argument, the administrative law judge was not required to give greater weight to the opinion of Dr. Yumang, on the ground that he was the miner's treating physician, since he found Dr. Yumang's death causation opinion unreasoned. *See* 20 C.F.R. §718.104(d)(5); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Clark*, 12 BLR at 1-155. Accordingly, we affirm the administrative law judge's finding that Dr. Yumang's opinion failed to establish death causation at Section 718.205(c)(2), (5).

Claimant also contends that the June 23, 2004 medical report of Dr. Cornett, a treating physician, established that the miner's death was hastened by pneumoconiosis. Claimant's Brief at 3. The administrative law judge, however, noted that while claimant listed Dr. Cornett's opinion on her Evidence Summary Form, he was unable, after extensive review of all of the record, to find the opinion. Consequently, the administrative law judge stated that he "had not included Dr. Cornett's report in [his] discussion of this claim." Decision and Order at 5 n.4.

A review of the record shows that the administrative law judge is correct that this report is not in the record. Other than stating that this report contains a statement by Dr. Cornett that the miner's death hastened pneumoconiosis, claimant does not challenge the administrative law judge's finding that the report was not in the record. Consequently, we affirm the administrative law judge's finding concerning the opinion of Dr. Cornett. *See* 20 C.F.R. §802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987).

In light of the foregoing, we affirm the administrative law judge's finding that the medical opinion evidence failed to establish death due to pneumoconiosis at Section 718.205(c). Because the administrative law judge properly found that the evidence failed to establish that the miner's death was due to pneumoconiosis, an essential element of entitlement in a survivor's claim, benefits are precluded. *See Trumbo*, 17 BLR at 1-87.

---

treatment records, an x-ray, a pulmonary function study, a blood gas study, histories and extensive medical literature. Director's Exhibit 22.

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

---

BETTY JEAN HALL  
Administrative Appeals Judge