

BRB No. 98-0850 BLA

LINDA RANDALL)
(Widow of ALBERT RANDALL))
)
 Claimant-Respondent)
)
 v.)
)
 MOUNTAIN LAUREL RESOURCES)
 COMPANY)
)
 and)
)
 WEST VIRGINIA COAL WORKERS')
 PNEUMOCONIOSIS FUND)
)
 Employer-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS') Date Issued: 7/22/99
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Lawrence P. Donnelly,
Administrative Law Judge, United States Department of Labor.

Ray E. Ratliff, Jr., Charleston, West Virginia, for claimant.

Stephen E. Crist (West Virginia Coal-Workers' Pneumoconiosis Fund),
Charleston, West Virginia, for employer/carrier.

Before:, SMITH and BROWN, Administrative Appeals Judges, and NELSON,
Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order - Awarding Benefits (97-BLA-0943) of Administrative Law Judge Lawrence P. Donnelly 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 found that the parties stipulated to fifteen years of coal mine employment and based on the filing date, applied the regulations found at 20 C.F.R. Part 718.¹ The administrative law judge found that claimant established death due to pneumoconiosis at 20 C.F.R. §718.205(c) and awarded benefits. Employer/carrier appeals, contending that the administrative law judge erred denying employer's motion to admit evidence, and erred in his weighing of the medical evidence. Claimant responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), has not participated in this appeal.

The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational and 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'Keeffe*

¹ The administrative law judge determined that the miner filed a claim for benefits on December 12, 1995, and was awarded benefits posthumously on January 27, 1997. Decision and Order at 3. The miner died on August 2, 1996, and claimant, the miner's widow, filed a survivor's claim on September 5, 1996. Director's Exhibit 1. The death certificate listed the cause of death as congestive heart failure, acute pulmonary congestion due to chronic obstructive pulmonary disease. Director's Exhibit 7.

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

Carrier initially contends that the administrative law judge erred in denying employer's motion to allow employer to submit evidence in response to claimant's evidence submitted just prior responsible operator the 20-day deadline. We disagree. The administrative law judge properly found that all but one of the physicians had submitted opinions earlier, and that claimant may seek clarification from the physicians. The administrative law judge therefore properly determined that claimant's submissions were in compliance with the 20-day rule.² See 20 C.F.R. §725.456(b); *Bethlehem Mines Corp. v. Henderson*, 939 F.3d 143, 16 BLR 2-1 (4th Cir. 1991); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-49 n.1 (1990); see also *Cabral v. Eastern Associated Coal Corp.*, 18 BLR 1-25, 1-34 n.9 (1993). We therefore reject employer's contention that the administrative law judge erred in denying its motion to admit evidence.

Employer next contends that the administrative law judge erred in his weighing of the medical reports. Specifically, employer contedns that the administrative law judge improperly found that the death certificate implied that death was due to pneumoconiosis, and improperly made a medical determination as the cause of death without evidence to support his contention. The evidence of record contains the opinions of nine physicians,

² As this is not a living miner's claim, and the miner dies in 1996, no new evidence in the form of x-rays or autopsies could be developed. Therefore, employer cannot be surprised by any new evidence . See *Henderson, supra* .

in addition to the death certificate.