

BRB No. 98-1562 BLA

BILLIE L. SHROUT)
(Widow of CLIFTON SHROUT))
)
Claimant-Petitioner)
)
v.)
)
EASTERN ASSOCIATED COAL COMPANY) DATE ISSUED: 7/16/99
)
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 on Remand of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Gregory C. Hook (Hook and Hook), Waynesburg, Pennsylvania, for claimant.

Richard A. Dean (Arter & Hadden, LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant, the widow of the deceased miner, appeals the Decision and Order on Remand (95-BLA-360) of Administrative Law Judge Michael P. Lesniak denying benefits 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). This case has been before the Board previously. In the administrative law judge's prior decision, the administrative law judge found thirty-four years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to

20 C.F.R. Part 718.¹ The administrative law judge concluded that the evidence of record was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were granted. Employer appealed and the Board affirmed the administrative law judge's determination that the miner suffered from pneumoconiosis and his discrediting of Dr. Ranavaya's opinion but remanded the case for the administrative law judge to reweigh the medical evidence in determining if death due to pneumoconiosis was established. *Shrout v. Eastern Associated Coal Co.*, BRB No. 97-0798 BLA (Feb. 19, 1998)(unpublished).

On remand, the administrative law judge found that the death certificate, autopsy report and the opinion of Dr. Ranavaya were insufficient to establish death due to pneumoconiosis.² The administrative law judge then weighed the remaining medical opinions and concluded that the opinion of Dr. Kleinerman, that the miner's death was not due to pneumoconiosis, was entitled to the most weight. Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in according less weight to the opinion of Dr. Goldblatt and in failing to explain why he reversed his award of benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate in this appeal.

The Board's scope of review is defined by statute. 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In a survivor's claim filed after January 1, 1982, claimant must establish that

¹The miner died on November 11, 1992. Director's Exhibit 7. Claimant filed her survivor's claim, the subject of the instant appeal, on October 15, 1993. Director's Exhibit 1.

²These findings are unchallenged on appeal and are therefore affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. See 20 C.F.R. §§718.1, 718.201, 718.202, 718.203, 718.205, 725.201; *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). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis will be considered a substantially contributing cause of death pursuant to Section 718.205(c)(2) when it actually hastens the miner's death. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S. Ct. 969 (1993).

After consideration of the administrative law judge's Decision and Order on Remand, 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. The administrative law judge, in the instant case, rationally found that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge, in weighing the conflicting evidence, noted that both Drs. Kleinerman and Goldblatt were highly qualified to evaluate the cause of the miner's death. Decision and Order on Remand at 7. The administrative law judge permissibly concluded that the opinion of Dr. Kleinerman, that pneumoconiosis did not cause or contribute to the miner's death, was entitled to more weight than the contrary opinion of Dr. Goldblatt as the physician provided detailed explanations for his conclusions. The administrative law judge further properly concluded that the opinion is supported by the greater weight of the evidence and is thus well reasoned and documented. See Decision and Order at 7-8; Employer's Exhibits 3, 5, 6; *Trumbo, supra*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Moreover, contrary to claimant's contentions, the administrative law judge did not abuse his discretion in according Dr. Goldblatt's opinion less weight as the administrative law judge, in accordance with the Board's remand order, properly questioned the reliability of the physician's reasoning in light of the objective study evidence of record and the physician's uncorroborated diagnosis of cor pulmonale. See Decision and Order on Remand at 7; Claimant's Exhibit 1; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985). The administrative law judge properly considered this evidence and rationally concluded that claimant failed to prove by a preponderance of the evidence pursuant to 20 C.F.R. §718.205(c) that pneumoconiosis contributed to the miner's death, as the weight of the better

reasoned and documented medical evidence of record indicated that the miner's death was not related to pneumoconiosis.³ *Shuff, supra; Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Dillon, supra*; Decision and Order on Remand at 8. Consequently, we affirm the administrative law judge's finding that the miner's death was not due to pneumoconiosis as it is supported by substantial evidence and is in accordance with law.⁴ *Shuff, supra; Neeley, supra; Trumbo, supra*.

Inasmuch as claimant has failed to establish that the miner's death was due to pneumoconiosis, a requisite element of entitlement for a survivor's claim pursuant to Part 718, entitlement thereunder is precluded. *Shuff, supra; Trumbo, supra*.

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

³We note that the presumption at 20 C.F.R. §718.304 is not applicable in this case as a review of the record indicates that there is no evidence of complicated pneumoconiosis contained therein. 20 C.F.R. §718.205(c)(3).

⁴Contrary to claimant's contention, the administrative law judge did explain his reasoning in the instant case and was not bound by his prior credibility determinations as the Board had vacated his weighing of the medical evidence and thus returned the parties to the *status quo ante*. See *Dale v. Wilder Coal Co.*, 8 BLR 1-119 (1985).

