

BRB No. 99-0495 BLA

HILDA A. YERGER)
(Widow of MARK A. YERGER))
)
 Claimant-)
 Petitioner)
) DATE ISSUED: _____)
 v.)
)
 DIRECTOR, OFFICE OF)
 WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT) DECISION AND ORDER
 OF LABOR)

Party-in-Interest

Appeal of the Decision and Order - Denial of Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Hilda A. Yerger, Herndon, Pennsylvania, *pro se*.

Rita A. Roppolo (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appears without the assistance of counsel and appeals the Decision and Order - Denial of Benefits (98-BLA-0148) of Administrative Law Judge Ralph A. Romano with respect to a miner's claim and 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).¹ In his

¹The relevant procedural history of this case is as follows: The miner filed an application for benefits on December 2, 1981. Director's Exhibit 48. This claim was finally denied on November 25, 1992, when the Board declined to alter its Decision and Order affirming Administrative Law Judge Paul A. Teitler's denial of benefits on the ground that the miner failed to demonstrate that he was totally disabled. *Yerger v. Director, OWCP*, BRB No. 89-1959 BLA (Nov. 25, 1992)(unpub. Order); Director's Exhibit 48. The miner filed a second claim on June 15, 1994. Director's Exhibit 1. Administrative Law Judge Robert D. Kaplan denied benefits on the ground that the miner did not establish a material change in conditions pursuant to 20 C.F.R. §725.309, as he did not establish total disability. Director's Exhibit 24. The miner initially filed an appeal with the Board, but this appeal was dismissed in light of the miner's decision to file a request for modification. *Yerger v. Director, OWCP*, BRB No. 96-0842 BLA (Aug. 28, 1996)(unpub. Order); Director's Exhibit 32.

The miner died on November 23, 1996, at which point in time his modification request was still being processed by the district director. Claimant, the miner's widow, filed an application for survivor's benefits on March 10, 1997.

Decision and Order, the administrative law judge determined that the evidence is insufficient to establish either a change in conditions or a mistake in a determination of fact in the prior denial of the miner's claim pursuant to 20 C.F.R. §725.310. Accordingly, the administrative law judge denied benefits in the miner's claim. With respect to the survivor's claim, the administrative law judge found that the evidence of record does not support a finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Therefore, benefits were also denied on the survivor's claim. Claimant has appealed and asserts that the administrative law judge erred in declining to address Dr. Karlavage's opinion when considering the miner's claim. Claimant also contends that the administrative law judge did not properly weigh the opinions of Drs. Ranavaya and Kraynak. The Director, Office of Workers' Compensation Programs, has responded and urges affirmance of the denial of benefits with respect to both claims.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). 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 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Director's Exhibit 39. The district director treated the filing as a survivor's claim and as a petition for modification of the district director's finding that the newly submitted evidence did not support modification of the denial of the miner's claim.

Director's Exhibit 40. Upon claimant's request, both claims were referred to Administrative Law Judge Ralph A. Romano for a hearing.

Upon review of the administrative law judge's Decision and Order and the relevant evidence, we affirm the denial of benefits in both the miner's claim and the survivor's claim, as the administrative law judge's findings are rational and supported by substantial evidence. With respect to the miner's claim, the administrative law judge properly found that the previous denial of the miner's duplicate claim did not contain a mistake in a determination of fact pursuant to Section 725.310.² Decision and Order at 4; see *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992). Regarding the issue of whether the newly submitted evidence supported a finding of a change in conditions, the administrative law judge properly found that Dr. Karlavage's 1994 report was not probative of this issue, as Dr. Karlavage's opinion predated the denial of the miner's duplicate claim in 1996. Decision and Order at 4; Director's Exhibit 33; see *Nataloni, supra*. With respect to the newly submitted opinions of Drs. Kraynak and Ranavaya, the administrative law judge acted rationally in discrediting Dr. Kraynak's opinion, despite his status as the miner's treating physician, on the ground that Dr. Kraynak's conclusion regarding the existence of a totally disabling pulmonary impairment is not supported by the valid objective studies of record. Decision and Order at 6; Director's Exhibit 43; see *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). In addition, the administrative law judge rationally found that Dr. Ranavaya's opinion, in which he indicated that the miner did not have a totally disabling respiratory or pulmonary impairment, was entitled to greater weight on the ground that Dr. Ranavaya's opinion is better supported by the objective evidence of record. Decision and Order at 6; see *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Thus, the administrative law judge properly concluded that the newly submitted evidence was insufficient to establish a change in conditions under Section 725.310 and acted appropriately, therefore, in denying benefits in the miner's claim.

Turning to the administrative law judge's consideration of the survivor's claim, in order to establish entitlement to survivor's benefits under 20 C.F.R. Part

²The evidence before Judge Kaplan in the miner's duplicate claim was, on its face, insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c). All of the pulmonary function studies and blood gas studies produced nonqualifying values. 20 C.F.R. §718.204(c)(1), (c)(2); Appendices B and C to 20 C.F.R. Part 718. In addition, the two physicians who submitted medical opinions both stated that the miner did not have a pulmonary impairment.

718 in a claim filed after January 1, 1982, claimant must establish, *inter alia*, that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantial contributing cause or factor leading to the miner's death, or that the miner's death was caused by complications of pneumoconiosis. 20 C.F.R. §§718.1, 718.205(c); see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The United States Court of Appeals for the Third Circuit, within whose jurisdiction the present case arises, has held that evidence demonstrating that pneumoconiosis hastened the miner's death establishes that pneumoconiosis was a substantially contributing cause of the miner's death.³ See *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

³The present case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as the miner's last year of coal mine employment occurred in Pennsylvania. Director's Exhibit 3; see *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

The evidence pertaining to the cause of the miner's death consists of the opinions of Drs. Kraynak and Ranavaya and the death certificate, on which Dr. Kraynak identified respiratory arrest due to coal workers' pneumoconiosis as the cause of death. Director's Exhibits 42-44, 52. The administrative law judge considered the relevant evidence and found that claimant did not meet her burden of establishing that pneumoconiosis caused or contributed to the miner's death pursuant to Section 718.205(c). Decision and Order at 7. We affirm this finding. The administrative law judge rationally determined that the death certificate and Dr. Kraynak's opinion were entitled to little weight, as Dr. Kraynak did not identify any objective evidence to support his conclusions nor did he explain the rationale underlying his opinion. *Id.*; see *Lango, supra*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Peskie, supra*; *Lucostic, supra*. Thus, the administrative law judge properly denied benefits in the survivor's claim on the ground that the evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c).⁴ See *Lukosevicz, supra*; *Neeley, supra*.

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

⁴In light of the fact that the administrative law judge acted within his discretion in discrediting Dr. Kraynak's opinion and the death certificate, error, if any, in the administrative law judge's determination that Dr. Ranavaya's contrary opinion was entitled to more weight is harmless. See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Moreover, in contrast to claimant's contention that Dr. Ranavaya's opinion was flawed because he did not diagnose pneumoconiosis, Dr. Ranavaya concluded that even if one assumed that the miner suffered from pneumoconiosis at the time of his death, pneumoconiosis did not substantially contribute to or hasten the miner's demise. Director's Exhibit 52.

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge