

BRB No. 99-0927 BLA

GERALDINE DICASIMIRRO)	
(Widow of WASSIL DICASIMIRRO))	
)	
Claimant-Respondent)	
)	
v.)	
)	
SKYTOP COAL COMPANY)	DATE ISSUED:
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT OF)	
LABOR)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Mark Semanchik (Lipkin, Marshall, Bohorad & Thornburg), Pottsville, Pennsylvania, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (98-BLA-0785) of Administrative Law Judge Ainsworth H. Brown 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). Initially, the miner's claim for black lung benefits, filed on February 27, 1991, was awarded by Administrative Law Judge Ralph H. Romano on January 11, 1997. Decision and Order at 2. The miner died on August 16, 1997, and claimant, the miner's widow, filed a survivor's claim on September 17, 1997. Decision and Order at 2; Director's Exhibit 1. Considering the claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that coal workers' pneumoconiosis was a substantially contributing cause of the miner's

death. See 20 C.F.R. §718.205(c)(2). Accordingly, benefits were awarded, commencing August 1997. Employer, on appeal, contends that the administrative law judge erred in awarding benefits. Claimant has not submitted a response brief. The Director, Office of Workers' Compensation Programs, has submitted a letter stating that he will not respond to the appeal unless specifically requested to do so by the Board.

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 the Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act 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 in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The United States Court of Appeals for the Third Circuit, under whose jurisdiction the instant case arises, has held that evidence that establishes that pneumoconiosis hastened the miner's death satisfies the portion of Section 718.205(c)(2) which requires proof that pneumoconiosis was a substantially contributing cause or factor in the miner's death. See *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (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 affirm the administrative law judge's finding that claimant met her burden under Section 718.205(c)(2) as it is rational and supported by substantial evidence. The medical evidence pertinent to the miner's death in the instant case includes a death certificate, signed by deputy coroner Charles Begansky, which lists the immediate cause of death as respiratory arrest, pulmonary hypertension, chronic interstitial pneumonitis and coal workers' pneumoconiosis. Director's Exhibit 4. Atherosclerotic coronary heart disease is listed as a significant condition contributing to death. *Id.* In addition to extensive hospital and clinic records relating to the miner's medical treatment during his lifetime, the record contains medical reports by Drs. Kraynak and Munir, both of whom were the miner's treating physicians, stating that coal workers'

pneumoconiosis was a substantial contributing factor in the miner's death. Director's Exhibits 7-10; Claimant's Exhibit 1.

Employer, on appeal, argues that the administrative law judge erred by relying upon the opinions of Drs. Kraynak and Munir, as well as the death certificate, asserting that the opinions were undocumented. A "documented" opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). A report may be adequately documented if it is based on items such as a physical examination, symptoms and patient's history. See *Hoffman v. B & G Construction Co.*, 8 BLR 1-65 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984); *Buffalo v. Director, OWCP*, 6 BLR 1-1164, 1-1166 (1984); *Gomola v. Manor Mining and Contracting Corp.*, 2 BLR 1-130 (1979). In the instant case, the administrative law judge considered Dr. Kraynak's statement that on the day before the miner died, he had "observed the miner as very short of breath, barely able to speak, his lips grossly cyanotic and his condition as terminal," and that these factors along with a review of all of the diagnostic studies caused him to conclude that pneumoconiosis hastened the miner's death. Decision and Order at 3; Director's Exhibit 7; Claimant's Exhibit 1. The administrative law judge also considered the October 29, 1997, letter by Dr. Munir, another treating physician since 1981, and noted that his opinion that the miner's death was due to pneumoconiosis was based on a detailed history and treatment for several years for respiratory failure with severe hypoxemia along with x-ray evidence of pneumoconiosis. Decision and Order at 4; Director's Exhibit 9. In addition, the administrative law judge also discussed the fact that pneumoconiosis was listed on the death certificate as a cause of the miner's death and that the hospital and clinic records for the years preceding the miner's death reflected treatment for pneumoconiosis, thus providing additional support for the physicians' conclusions. Decision and Order at 3-4; Director's Exhibits 3, 8, 10. The administrative law judge thus adequately discussed the findings of Drs. Kraynak and Munir and reasonably relied on their opinions in finding that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. *Lukosevicz, supra*; see Decision and Order at 4.

Further, we reject employer's assertions that the administrative law judge erred by failing to consider the notations in the autopsy report concerning the severity of the miner's pneumoconiosis. In its brief, employer states that "[t]he record contains ... the autopsy report" and argues that the findings contained therein may refute the findings made by the physicians. Our review of the record reveals that the autopsy report referred to in employer's brief and discussed at length at the hearing was never actually admitted into evidence prior to or during the hearing.

Hearing Transcript at 9-28.¹ As the autopsy report is not in the record, the administrative law judge was not required to consider this evidence and, therefore, employer's argument is rejected. Consequently, we affirm the administrative law judge's finding that pneumoconiosis was a substantially contributing cause of the miner's death as it is supported by substantial evidence.² See 20 C.F.R. §718.205(c)(2); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

¹ Although the autopsy report was offered for identification as "Operator's Exhibit Number 1" at the hearing, Hearing Transcript at 27, it does not appear to have been admitted into evidence by counsel at the hearing, is not contained in the record before the Board and was not discussed by the administrative law judge in his Decision and Order.

² We note that the administrative law judge initially cited the hastening death standard enunciated in *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989) and that his consideration of the evidence and findings under 20 C.F.R. §718.205(c)(2) are in accordance with that standard.