

BRB No. 00-0979 BLA

GLADYS MARIE PHILLIPS)
(Widow of RICHARD PHILLIPS))
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED:
)
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Timothy S. Williams (Judith E. Kramer, Acting 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, SMITH, Administrative Appeals Judge and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, widow of the miner, appeals the Decision and Order - Denial of Benefits (99-BLA-1110) of Administrative Law Judge Daniel J. Roketenetz 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).¹ Based on the date of filing, the

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80, 107 (2000) to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found the evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment, but insufficient to establish that pneumoconiosis caused or hastened death. Benefits were, accordingly, denied.

On appeal, claimant contends that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the denial of benefits.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on April 20, 2001, to which only the Director has responded, asserting that the regulations at issue in the lawsuit do not affect the outcome of this case.² Based on the brief submitted by the Director and our review, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, we will proceed to adjudicate the merits of this appeal.

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

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); see *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). For

² Pursuant to the Board's instructions, the failure of a party to submit a brief within 20 days following receipt of the Board's Order issued on April 20, 2001, would be construed as a position that the challenged regulations will not affect the outcome of this case.

survivor's claims filed on or after January 1, 1982, death will be considered to be 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, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); see *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

Claimant argues that the administrative law judge erred in not relying on the medical evidence prepared by the miner's treating physician, Dr. Horstman, which was supported by other medical evidence, that the miner's pneumoconiosis hastened his death, and that the administrative law judge erred in according greater weight to Dr. Schweizer, the autopsy prosecutor, as Dr. Schweizer did not consider the amended death certificate and was not claimant's treating physician. We disagree.

Dr. Horstman completed the miner's death certificate, which listed the cause of death on April 15, 1997 as myocardial infarction due to coronary artery disease. Director's Exhibit 8. In an amended the death certificate, however, Dr. Horstman listed the cause of death as myocardial infarction due to coronary artery disease due to pneumoconiosis. Claimant's Exhibit 2. In a letter dated, June 23, 1998, Dr. Horstman opined that the cause of the miner's death was coronary artery disease, but that black lung contributed to the miner's respiratory cardiac difficulties. Director's Exhibit 11. Dr. Horstman also opined that chronic pulmonary impairment was caused by 10 years of coal mine employment, and responded yes when asked if the miner's lung condition hastened death, noting that "the lung compromise stressed the coronary artery condition and hastened death." Director's Exhibit 15. Coal workers' pneumoconiosis was listed as a final diagnosis on the autopsy. Director's Exhibit 9. Dr. Schweizer, the autopsy prosecutor, however, concluded that although he found "[i]ncreased carbon pigment deposition with histopathologic features consistent with coal workers' pneumoconiosis[,]" and "mild regional emphysema[,]" "the "[m]ild degree and extent of fibrosis would not likely have significantly compromised this patient's pulmonary function." Director's Exhibit 9. Dr. Delara, who reviewed autopsy slides, found that "[t]he pneumoconiosis present was not the immediate cause of death but compromised the miner's pulmonary functions to a degree he had to be hospitalized frequently[,]" Director's Exhibit 16 and Dr. Buddington a pathologist, who reviewed the autopsy evidence, found the lungs consistent with coal worker's pneumoconiosis and mild pulmonary emphysema, but did not address the cause of death. Claimant's Exhibit 1.

The administrative law judge permissibly accorded the opinions of Drs. Horstman and Delara less weight as he found them brief, conclusory and lacking in supporting evidence and explanation. *Tennessee Consolidated Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-130 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Halsey v. Richardson*, 441 F.2d 1230, 1236 (6th Cir. 1971); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*), *aff'd sub nom. Director, OWCP v. Cargo Mining Co.*, Nos. 88-3531, 88-3578 (6th Cir. May 11, 1998)(unpub.); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985). Further, contrary to claimant's contention, the administrative law judge was not required to accord greater weight to Dr. Horstman as claimant's treating physician. *Griffith, supra*; *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Terlip v. Director, OWCP*, 8 BLR 1-363 (1985); *see also Cantrell v. United States Steel Corp.*, 6 BLR 1-1003 (1984).

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Accordingly, since the administrative law judge rationally concluded that the evidence of record was insufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner's death, we must affirm the administrative law judge's denial of benefits in this survivor's claim as it is supported by substantial evidence and in accordance with law.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge