

BRB No. 01-0788 BLA

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| VICTORIA A. ANDRIA |) | | |
| (Survivor of RAYMOND L. ANDRIA) |) | | |
| |) | | |
| Claimant-Petitioner |) | | |
| |) | | |
| v. |) | | |
| |) | | |
| U.S. STEEL MINING COMPANY, LLC |) | DATE | ISSUED: |
| |) | | |
| Employer-Respondent |) | | |
| |) | | |
| and |) | | |
| |) | | |
| DIRECTOR, OFFICE OF WORKERS' |) | | |
| COMPENSATION PROGRAMS, UNITED |) | | |
| STATES DEPARTMENT OF LABOR |) | | |
| |) | | |
| Party-in-Interest |) | DECISION AND ORDER | |

Appeal of the Decision and Order - Denying Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Anthony J. Kovach, Kovach & Kovach, Uniontown, Pennsylvania, for claimant.

Travis W. Smith, Burns, White & Hickton, Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (00-BLA-1036) of Administrative Law Judge Daniel L. Leland with respect to 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). In this survivor's claim the administrative law judge found that the evidence failed to establish that the miner's death was caused, substantially contributed to, or hastened by pneumoconiosis within the

meaning of 20 C.F.R. §718.205(c) (2001).¹ Decision and Order at 4. The administrative law judge found Dr. Wecht's opinion that the miner's pneumoconiosis hastened his death by burdening an already compromised heart not well reasoned. On the other hand he found the opinions of Drs. Perper and Bush that the miner's pneumoconiosis was too mild to have had any effect on his death to be "better reasoned and based on a thorough evaluation of decedent's medical records." *Id.* Therefore, the administrative law judge concluded that the evidence in the record was insufficient to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly benefits were denied.

On appeal claimant argues that the administrative law judge erroneously failed to give weight to clinical evidence that the miner suffered from severe pulmonary hypertension and pathological evidence of cor pulmonale, and that the evidence of these conditions established "hypoxia from a primary lung disease which would have hastened Mr. Andria's demise." Claimant's Brief at 6. On the other hand, employer argues that substantial evidence supports the administrative law judge's finding that Dr. Wecht's opinion is not credible because he offered no objective findings to support his opinion that the presence of coal workers' pneumoconiosis created an added strain on the miner's heart, and is outweighed by the more credible opinions of Drs. Bush and Perper. In particular, employer cites to Dr. Bush's testimony that the degree of the miner's coal workers' pneumoconiosis was so minimal that it would not have raised pulmonary pressure sufficiently to cause cor pulmonale. *Id.* at 8. The Director, Office of Workers' Compensation Programs, as a party-in-interest, has not responded to this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 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).

¹ The administrative law judge did not explicitly find that claimant established the existence of coal worker's pneumoconiosis within the meaning of 20 C.F.R. §718.202 (2001). However, that finding is implicit in his opinion, and employer does not challenge the existence of pneumoconiosis on appeal.

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, the pneumoconiosis arose out of coal mine employment, and 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 survivors' 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)-(4). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens it. 20 C.F.R. §718.205(c)(5) (2001); see *Lukosevicz v. Director, OWCP*, 888 F.2d 1001 (3rd Cir. 1989).

Claimant's principal argument is that the administrative law judge erroneously failed to give weight to the evidence of pulmonary hypertension, which, if evaluated appropriately, would establish that the miner's coal workers' pneumoconiosis hastened his death. Claimant's Brief at 6, 8, 13-15. However, the miner's extensive medical record contains only one diagnosis of severe pulmonary hypertension on a 1994 test report.² The miner died in 1999, more than five years after that diagnosis; there is no other affirmative reference to severe pulmonary hypertension in any other doctor's notes, in medical test reports, or in any hospital records.

Moreover, the only evidence in the record relating the miner's pneumoconiosis to severe pulmonary hypertension is testimony by Dr. Wecht. When asked by claimant's counsel whether the miner's asserted severe pulmonary hypertension (which counsel claimed was diagnosed in "several" of the miner's records) demonstrated that the miner had serious lung disease, Dr. Wecht responded that severe pulmonary hypertension was consistent with "long-standing objective pulmonary disease." Claimant's Exhibit 4 at 18. Significantly, Dr. Wecht did not

² That reference is found in the medical records from Ruby Memorial Hospital (Claimant's Exhibit 3), and is contained in an April 1, 1994 Adult Echocardiography Report. The doctor reported "[s]evere pulmonary hypertension with an estimated PA systolic pressure of 74-78 mmHg. . ."; the doctor's final impression also referenced severe pulmonary hypertension. The report indicates that Dr. Gosai, the miner's family doctor, had requested the echocardiography. However, there is no reference to severe pulmonary hypertension in Dr. Gosai's notes for that period of time, or for any other for that matter. Director's Exhibit 13.

diagnose severe pulmonary hypertension. On the other hand, the findings of Drs. Bush and Perper that the miner's pneumoconiosis was too minimal to have hastened his death were supported by their findings of slight pneumoconiosis in the autopsy slides and the miner's medical records, which do not reveal any evidence of respiratory impairment. Dr. Bush also testified that primary lung disease must be extensive in order to raise pulmonary artery pressure. Employer's Exhibit 1 at 40.

It is within the administrative law judge's discretion, as the trier-of-fact, to determine the weight and credibility to be accorded the medical experts, see *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984), and to assess the evidence of record and draw his own conclusions and inferences from it, see *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). An administrative law judge may give more weight to physicians' opinions, such as those of Drs. Bush and Perper, which he finds based on a more thorough review of the evidence of record and better reasoned. See *Hall v. Director, OWCP*, 8 BLR 1-193 (1985). The Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge when his findings are supported by substantial evidence, see *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

In view of the lack of evidence of pulmonary hypertension, claimant's failure to produce evidence linking the miner's pneumoconiosis to severe pulmonary hypertension, and the administrative law judge's reasoned decision to give more weight to the opinions of Drs. Perper and Bush, substantial evidence supports the administrative law judge's determination that claimant failed to establish that the miner's death was due to pneumoconiosis within the meaning of Section 718.205(c). 20 C.F.R. §718.205(c) (2001); *Mancia v. Director, OWCP*, 130 F.3d 579, 585 (3d Cir. 1997); *Lukosevicz, supra*. Therefore, we affirm as rational and supported by substantial evidence the administrative law judge's otherwise unchallenged finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Mancia, supra*.

In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), an essential element of entitlement under 20 C.F.R. Part 718 in a survivor's claim, see *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we affirm the administrative law judge's denial of benefits.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge