

BRB No. 03-0853 BLA

JINETTA DANIELS)	
(Widow of COY DANIELS, Junior))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	DATE ISSUED: 06/22/2004
CORPORATION)	
)	
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 - Denying Benefits of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order - Denying Benefits (02-BLA-5426) of Administrative Law Judge Gerald M. Tierney rendered 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 The administrative

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 20 C.F.R. Parts 718, 722, 725 and 726

law judge found forty-four years of coal mine employment established and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.² The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a) and 718.203(b), but insufficient to establish that pneumoconiosis was a substantially contributing cause of death pursuant to Section 718.205(c). Accordingly, benefits were denied.

On appeal, claimant contends that the evidence is sufficient to establish death due to pneumoconiosis. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, (the Director) has filed a letter indicating that he would not participate in 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'Keeffe 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 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)-(4). 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 *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert denied*, 506 U.S. 1050 (1993).

(2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² The miner died on September 22, 2000. Director's Exhibit 11. Claimant filed her claim for survivor's benefits on January 22, 2001, which was denied by the district director. Director's Exhibits 23, 31. Claimant requested a hearing and the case was transferred to the Office of the Administrative Law Judges on August 16, 2002. Director's Exhibits 32, 36.

After consideration of the administrative law judge's Decision and Order, 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 death certificate, completed by Dr. Larson, listed respiratory failure as the immediate cause of death, with underlying causes of pneumonia and pneumoconiosis. Cancer, black lung, and diabetes were listed as other significant conditions. Director's Exhibit 11. The autopsy, completed by Dr. Koh, noted the existence of simple pneumoconiosis but listed the terminal events as respiratory failure and terminal cancer. Decision and Order at 2; Director Exhibit 12; Employer's Exhibit 5. Drs. Fino, Weiss and Gaziano, all found that pneumoconiosis did not contribute to the miner's death. Employer's Exhibits 9-11.

In considering the evidence, the administrative law judge rationally found that Dr. Larson's listing of pneumoconiosis on the death certificate combined with the notation of the existence of pneumoconiosis on autopsy, without further explanation, was insufficient to establish that pneumoconiosis contributed to the miner's death. *Bill Branch Coal Co. Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988). In addition, contrary to claimant's contention, the administrative law judge rationally accorded greater weight to the opinions of Drs. Fino, Weiss and Gaziano, than to that of Dr. Larson, claimant's treating physician, as he found them to be better reasoned and documented. The administrative law judge noted that Drs. Fino and Weiss provided detailed reports. 20 C.F.R. 718.104(d)(5); *Sparks*, 213 F.3d 186, 22 BLR 2-51; *Milburn Colliery Co. v. Hicks*, 138 F.2d 524, 21 BLR 2-323 (4th Cir. 1998); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 31-33 (in weighing opinions, the administrative law judge is called upon to consider their quality, taking into account, among other things, the opinions' detail and detail of analysis); *Sterling Smokeless Coal Co., v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985). We, therefore, affirm the administrative law judge's finding that the evidence failed to establish death due to pneumoconiosis pursuant to Section 718.205(c) as it is supported by substantial evidence and is in accordance with law, and the denial of benefits in this survivor's claim. *Shuff*, 967 F.2d 977, 16 BLR 2-90; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

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