

BRB No. 05-0930 BLA

DIXIE W. WRIGHT)
(Widow of DAVID R. WRIGHT))
)
 Claimant-Petitioner)
)
 v.)
)
 CONSOLIDATION COAL CORPORATION)
) DATE ISSUED: 06/08/2006
 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 Survivor's Benefits of Thomas M. Burke, Associate Chief Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe, Williams, and Rutherford), Norton, Virginia, for claimant.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

Before: SMITH, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (2005-BLA-5179) of Associate Chief Administrative Law Judge Thomas M. Burke denying benefits 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). The administrative law judge noted

¹ Claimant is Dixie W. Wright, the widow of David R. Wright, the miner, who died on October 17, 2002. Decision and Order at 2; Director's Exhibit 6.

that the miner had worked for thirteen years in coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1)-(4) and 718.203(b), but that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant asserts that the administrative law judge erred in discrediting Dr. Perper's opinion and in according weight to Dr. Castle's opinion. Employer responds, asserting that the administrative law judge has properly weighed the evidence regarding the cause of the miner's death and urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not submitted a brief in 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 rational, supported by substantial evidence, and in accordance with applicable law. 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).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Sumner v. Blue Diamond Coal Co.*, 12 BLR 1-74 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. See 20 C.F.R. §718.205(c)(5); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), cert. denied, 506 U.S. 1050 (1993).

After consideration of the administrative law judge's Decision and Order, the arguments of the parties, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error.

Pursuant to Section 718.205(c), the administrative law judge considered a death certificate and four medical reports addressing the cause of the miner's death. The miner's death certificate listed the immediate cause of his death as lung cancer. Decision

and Order at 10; Director's Exhibit 6. No other causes or contributing conditions were listed. Dr. Perper, who reviewed the miner's medical records and examined the miner's lungs and heart, concluded that the miner had pneumoconiosis and that it contributed to his death. Decision and Order at 6-7, 10-11; Director's Exhibit 7. Dr. Perper opined that the primary cause of death was metastatic carcinoma of lung; contributory causes of death included coal workers' pneumoconiosis, COPD with emphysema, and arteriosclerotic heart disease; and that pneumoconiosis contributed directly and through associated centrilobular emphysema and complicating cancer of the lung. *Id.* By contrast, Drs. Naeye, Bush and Castle reviewed the autopsy findings and the miner's medical records and concluded that the miner died due to lung cancer and that pneumoconiosis did not cause, contribute to, or hasten his death in any way. Decision and Order at 11-13; Employer's Exhibits 1, 6, 8-10. Based on all of this evidence, the administrative law judge found that claimant did not establish that the miner's death was due to pneumoconiosis.

On appeal, claimant asserts that the administrative law judge failed to provide rational explanations for rejecting the opinion of Dr. Perper. Claimant also argues that the administrative law judge gave no valid reason for finding the opinion of Dr. Castle to be reasoned. Claimant's contentions are without merit and amount to a request to reweigh the evidence. Contrary to claimant's arguments, the administrative law judge did not discredit Dr. Perper because he relied on certain research studies. The administrative law judge permissibly concluded that Dr. Perper's opinion was not well documented or reasoned and unsupported because he found the physician failed to provide a comprehensive explanation for his conclusion and stated that:

Dr. Perper simply diagnoses particular conditions and cites articles that determine it is possible for those conditions to be related to coal mine dust exposure. Dr. Perper fails to explain how or why he concluded that the miner's medical conditions were in fact caused by his coal mine dust exposure.

Decision and Order at 11.

As a result, the administrative law judge acted within his discretion in determining that the report of Dr. Perper, the only opinion that arguably supports a finding that pneumoconiosis contributed to the miner's death, was entitled to little weight. Decision and Order at 11; *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); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985).

In addition, there is no merit to claimant's suggestion that the denial of benefits must be vacated because the opinion of Dr. Castle, who opined that the miner's death was

not due to pneumoconiosis, is not well reasoned. Since the administrative law judge reasonably found that the only medical evidence that could arguably support claimant's burden does not do so, claimant has failed to carry her burden of establishing that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c); see *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994). The adequacy of the contrary medical opinions is, therefore, irrelevant. See *Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1983).

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. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). In this case, contrary to claimant's contentions, the administrative law judge considered and weighed all the relevant evidence of record. His findings are reasonable, supported by the record, and in accordance with law. Consequently, we affirm the administrative law judge's finding that the evidence failed to establish that the miner's death was due to pneumoconiosis. *Shuff*, 967 F.2d 977, 16 BLR 2-90. Moreover, as claimant has failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), claimant cannot establish her entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718. See *Trumbo*, 17 BLR at 1-87.

Accordingly, the administrative law judge's Decision and Order Denying Survivor's Benefits in this survivor's claim is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge