

BRB No. 06-0787 BLA

STELLA HARTZEL	)	
(Widow of RONALD O. HARTZEL)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
U.S. STEEL MINING COMPANY	)	
	)	DATE ISSUED: 06/28/2007
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Daniel L. Chunko (Chunko, Pangburn & Francis, LLC), Washington, Pennsylvania, for claimant.

Christopher Pierson (Burns, White & Hickton), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order (05-BLA-5504) of Administrative Law Judge Richard A. Morgan 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 credited the miner with at least thirty-four years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718.<sup>2</sup> The administrative law judge found that the miner suffered from pneumoconiosis arising out of coal mine employment, but further found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in failing to find the evidence sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).<sup>3</sup> Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs has not participated 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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<sup>1</sup> Claimant is the widow of the miner, who died on January 15, 2003. Decision and Order at 3; Director's Exhibit 8. Claimant filed her survivor's claim, the subject of this appeal, on October 31, 2003. Decision and Order at 2; Director's Exhibit 2. The miner filed a claim on March 20, 2001, which was finally denied by Administrative Law Judge Daniel L. Leland in a Decision and Order issued on December 10, 2002, on the bases that the evidence did not establish pneumoconiosis or total disability. Director's Exhibit 1. No further action was taken on the miner's claim.

<sup>2</sup> The record indicates that the miner's coal mine employment occurred in Pennsylvania. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

<sup>3</sup> We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant did not establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(1), (3). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10.

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §718.205(a)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(c)(2), (4). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Lango v. Director, OWCP*, 104 F.3d 573, 576, 21 BLR 2-12, 2-18 (3d Cir. 1997); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 1006, 13 BLR 2-100, 2-108 (3d Cir. 1989). Failure to establish any one of these requisite elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

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

Claimant alleges that the administrative law judge erred in finding that the evidence failed to establish the presence of pneumoconiosis. Claimant's Brief at 2. The record reflects that the parties stipulated to the existence of pneumoconiosis arising out of coal mine employment, and the administrative law judge found the stipulated fact to be supported by the evidence. Decision and Order at 10. Because the existence of pneumoconiosis was found to have been established by the administrative law judge, claimant's allegation of error lacks merit.

The administrative law judge considered the medical evidence relevant to the miner's death, which consisted of: Dr. Pish's treatment records from January 31, 1992 until the miner's death, Director's Exhibit 10; the death certificate, Director's Exhibit 8; Dr. Wecht's autopsy report and supplemental medical opinion, Director's Exhibit 16; Claimant's Exhibit 1; and Dr. Oesterling's medical opinion based on a review of the autopsy report and slides and the miner's medical records, Employer's Exhibit 1, 2.

The record reflects that the miner was a patient at the University of Pittsburgh Medical Center, but did not respond favorably to treatment and died on January 15, 2003. Director's Exhibit 10. Dr. Avissar completed the miner's death certificate and listed the immediate causes of death as "Renal Failure" due to "Diabetes;" no other underlying causes of death were listed. Decision and Order at 7; Director's Exhibit 8.

Under Section 718.205(c)(2), (4), and (5), the administrative law judge determined that the opinions of Drs. Wecht and Oesterling were the most probative with respect to whether “pneumoconiosis was a substantially contributing cause or factor and/or hastened” the miner’s death. Decision and Order at 10-11. The administrative law judge found that while Dr. Wecht opined that pneumoconiosis was a substantial contributing factor in the miner’s death, Dr. Oesterling concluded that pneumoconiosis played no role in the miner’s demise. Decision and Order at 8-9. After thoroughly discussing the medical reports in light of the physicians’ qualifications and reasoning, the administrative law judge concluded that claimant had not met her burden of establishing that the miner’s death was substantially contributed to or hastened by pneumoconiosis. Decision and Order at 7-9.

Claimant contends that the administrative law judge erred by failing to accord determinative weight to the opinion of Dr. Wecht, the autopsy prosector, and in failing to find that pneumoconiosis was a substantial contributing factor in the miner’s death. *See* 20 C.F.R. §718.205(c)(2), (5). The administrative law judge weighed the conflicting reports and stated:

In weighing the medical opinions of Drs. Wecht and Oesterling, I initially note that both physicians are well-qualified pathologists. Therefore, the relative qualifications of these physicians are not determinative. Although Dr. Wecht performed the autopsy, I find that Dr. Oesterling’s opinion is better reasoned and documented. Dr. Wecht’s autopsy report lists coal worker’s pneumoconiosis among numerous pathological diagnoses, without specifying the cause of the miner’s death (DX 9). Moreover, Dr. Wecht’s supplemental report primarily restates his own autopsy findings and notes [claimant’s] lengthy coal mine employment history, while simply concluding that the miner’s coal worker’s pneumoconiosis was a substantially contributing factor in his death (CX 1). Dr. Oesterling’s opinion, as set forth in his report and deposition testimony, is not only based on his own pathology findings. Dr. Oesterling also considered and analyzed Dr. Wecht’s opinion, and discussed the miner’s treatment records, smoking history, and an echocardiogram which undermines Dr. Wecht’s diagnosis of cor pulmonale. Accordingly, I find that Dr. Oesterling provided a more detailed analysis and explanation for his opinion (EX 1, 2). Therefore, I accord greater weight to Dr. Oesterling’s opinion than that of Dr. Wecht. In view of the foregoing, I find that Claimant has not established death due to pneumoconiosis under the provisions of §718.205(c)(2), (4), (5), or by any other means.

Decision and Order at 11.

It is within the administrative law judge's discretion to determine whether a medical report is adequately reasoned and persuasive. In this case, the administrative law judge reviewed the physicians' opinions, and permissibly determined that Dr. Oesterling's opinion was entitled to greater weight than Dr. Wecht's opinion. *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12; *Worhach v. Director, OWCP*, 17 BLR 1-105; *Trumbo*, 17 BLR 1-85; *Urgolites v. Bethenergy Mines, Inc.*, 17 BLR 1-20 (1992); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

We find no merit in claimant's contention that her "medical evidence was not accorded sufficient weight" by the administrative law judge. Claimant's Brief at 4. *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 9 BLR 2-1 (3d Cir. 1986); *Trumbo*, 17 BLR 1-85; *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); *Fields*, 10 BLR 1-19. The administrative law judge is not required to credit the opinion of the physician who performed the miner's autopsy, but may credit the opinion of a doctor who reviewed the relevant medical evidence. *Evosevich v. Consolidation Coal Co.*, 789 F.2d 1021, 9 BLR 2-10 (3d Cir. 1986); *Cadwallader v. Director, OWCP*, 7 BLR 1-879 (1985); *Dipyatic v. BethEnergy Mines Corp.*, 7 BLR 1-758 (1985). The administrative law judge, therefore, permissibly give greater weight to the opinion of Dr. Oesterling as the administrative law judge found his opinion was better reasoned and documented than Dr. Wecht's opinion. Decision and Order at 11; Employer's Exhibits 1, 2; Claimant's Exhibit 1; see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Because it is within the discretion of the administrative law judge, as the trier of fact, to determine whether a medical report is adequately documented and reasoned, and the administrative law judge has properly exercised his discretion in this case, we affirm the administrative law judge's finding that the medical reports of record do not support a finding of death due to pneumoconiosis under Section 718.205(c). *Lukosevich*, 888 F.2d 1001, 13 BLR 2-101. Because claimant did not establish that the miner's death was caused, substantially contributed to, or hastened by pneumoconiosis pursuant to Section 718.205(c), see *Lango*, 104 F.3d at 576, 21 BLR at 2-18; *Lukosevich*, 888 F.2d at 1006, 13 BLR at 2-108, an essential element of entitlement in a survivor's claim under 20 C.F.R. Part 718, we affirm the denial of benefits.

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge