

BRB Nos. 07-0753 BLA
and 07-0753 BLA-A

G.A.)
(Widow of E.A.))
)
Claimant-Petitioner)
)
v.)
)
T.C.H. COAL COMPANY) DATE ISSUED: 06/25/2008
)
and)
)
A.T. MASSEY)
)
Employer/Carrier-Respondents)
Cross-Petitioners)
)
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 Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts (William Lawrence Roberts, PSC), Pikeville, Kentucky, for claimant.

Allison B. Moreman (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

Helen H. Cox (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals,¹ and employer cross-appeals, the Decision and Order Denying Benefits (2004-BLA-6795) of Administrative Law Judge Pamela Lakes Wood 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). The administrative law judge credited the miner with at least twenty years of qualifying coal mine employment, but found the weight of the evidence insufficient to establish that pneumoconiosis caused, substantially contributed to, or hastened the miner's death pursuant to 20 C.F.R. §718.205(c)(1)-(5). The administrative law judge also found the evidence insufficient to invoke the irrebuttable presumption of death due to pneumoconiosis under 20 C.F.R. §718.304. Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's finding that the evidence failed to establish complicated pneumoconiosis at Section 718.304 and death due to pneumoconiosis at Section 718.205(c). Employer urges affirmance of the denial of benefits, and cross-appeals, arguing that the administrative law judge erred in excluding evidence under the limitations set by 20 C.F.R. §725.414.² The Director, Office of Workers' Compensation Programs, has filed a limited response, arguing that Section 725.414 is valid and that the administrative law judge's application of the evidentiary limitations should be affirmed.

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).

In order to establish entitlement to survivor's benefits in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that

¹ Claimant is the widow of the miner who died on May 29, 2003. Director's Exhibit 10. Claimant filed her survivor's claim for benefits on August 5, 2003. Director's Exhibit 2.

² Employer concedes that its arguments on cross-appeal need not be reached if the Board affirms the administrative law judge's denial of benefits. Employer's Brief at 21.

pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 718.304; *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). 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); *see also Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-116 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993).³

Claimant contends that the administrative law judge failed to accord appropriate weight to the opinions of Drs. Dennis and Adkins based on their respective status as the autopsy prosector and the miner's treating physician. Claimant asserts that the opinions of Drs. Dennis and Adkins, supported by the opinion of Dr. DeLara, are well-reasoned and sufficient to establish either that the miner suffered from complicated pneumoconiosis pursuant to Section 718.304, or that pneumoconiosis was a substantially contributing cause or factor and/or hastened the miner's death at Section 718.205(c).

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 is supported by substantial evidence, consistent with applicable law, and contains no reversible error. In finding the evidence insufficient to invoke the irrebuttable presumption of death due to pneumoconiosis under 20 C.F.R. §718.304,⁴ the administrative law judge accurately reviewed all of the relevant evidence, and determined that the record contained no x-rays classified as yielding one or more large opacities measuring over one centimeter (cm) in diameter under subsection (a). Decision and Order at 19; Director's Exhibits 1, 14, 16. In reviewing the conflicting pathologists' reports at subsection (b), the administrative law judge determined that only Dr. Dennis,

³ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as the miner was last employed in the coal mining industry in Kentucky. Director's Exhibit 1. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

⁴ 20 C.F.R. §718.304 of the regulations provides that there is an irrebuttable presumption of death due to pneumoconiosis if the miner suffered from a chronic dust disease of the lung which: (a) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, is a condition which would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3)(A); 20 C.F.R. §718.304(a)-(c).

the autopsy prosector, diagnosed progressive massive fibrosis (PMF) and noted “macules measuring greater than 3 to 5 cms,” Director’s Exhibit 13, but the physician did not indicate what size such macules would likely present on x-ray. Decision and Order at 10-11, 15, 19-20. The administrative law judge further determined that Dr. DeLara’s review of the autopsy slides noted areas of “focal massive fibrosis,” but it was not clear as to what the physician was describing as he did not include any measurements of the abnormalities observed.⁵ Decision and Order at 13, 20; Claimant’s Exhibits 1, 2. As Drs. Caffrey and Roggli both opined that the autopsy evidence revealed only simple pneumoconiosis and not PMF, Director’s Exhibit 17; Employer’s Exhibits 3, 7, 8, the administrative law judge acted within her discretion in finding that the pathological evidence was too unclear for an equivalency determination to be made based upon Dr. Dennis’s findings, and that Dr. Roggli’s superior credentials as an internationally recognized expert on pneumoconiosis added “slight weight to his analysis.” Decision and Order at 11-14, 20; *see Gray v. SLC Coal Co.*, 176 F.3d 382, 21 BLR 2-615 (6th Cir. 1999); *see also Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). At subsection (c), because the medical opinions of Drs. Repsher, Ghio and Adkins relied upon a review of the pathologists’ reports in determining whether complicated pneumoconiosis was shown on autopsy, but added “nothing of substance to the equation,” Decision and Order at 20, the administrative law judge rationally found this evidence insufficient to support invocation. Decision and Order at 15-18, 20; Director’s Exhibit 13; Employer’s Exhibits 1, 2, 6, 10. Consequently, weighing all of the categories together, the administrative law judge properly found that claimant failed to establish invocation of the irrebuttable presumption pursuant to Section 718.304(a)-(c), and we affirm her finding as supported by substantial evidence. *See Gray*, 176 F.3d 382, 21 BLR 2-615; *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*); *Gruller v. BethEnergy Mines, Inc.* 16 BLR 1-3 (1991).

In finding the evidence insufficient to establish that pneumoconiosis caused, substantially contributed to, or hastened the miner’s death pursuant to Section 718.205(c), the administrative law judge permissibly found Dr. Dennis’s opinion unreasoned and undocumented based on inconsistencies between the autopsy findings and the physician’s supplemental report. While the autopsy report indicated that the miner died as a result of a probable cardiac arrhythmia and pulmonary congestion and edema along with bronchopneumonia, Dr. Dennis’s supplemental report stated that silica particles cause fibrosis and fibrosis is progressive to PMF and cor pulmonale. Moreover, the physician concluded that pneumoconiosis contributed to or hastened the miner’s death because

⁵ Dr. DeLara’s diagnoses included anthracosilicosis; panlobular emphysema consistent with simple coal workers’ pneumoconiosis; and chronic obstructive lung disease caused entirely by inhalation of coal mine dust. Claimant’s Exhibits 1, 2.

PMF led to cor pulmonale, and cor pulmonale led to hypoxia and bronchopneumonia, then cardiac arrest. Director's Exhibit 13; Claimant's Exhibit 3. As the autopsy report did not mention or reflect findings indicative of cor pulmonale, and Dr. Dennis did not explain the discrepancies between the two reports, the administrative law judge acted within her discretion in according little weight to the physician's opinion. Decision and Order at 21; *see Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); *Puleo v. Florence Mining Co.*, 8 BLR 1-198 (1984). Dr. DeLara's opinion was also properly found to be unreasoned and undocumented because the physician provided no rationale or evidentiary support for his conclusion that pneumoconiosis greatly contributed to and hastened the miner's death. Decision and Order at 21-22; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Similarly, the administrative law judge rationally declined to accord controlling weight to the opinion of Dr. Adkins, that pneumoconiosis contributed to or hastened the miner's death based on "autopsy finding of coal dust fibrosis COPD," as lacking reasoned support. Decision and Order at 21; *see Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-22. The administrative law judge concluded that the opinions of Drs. Dennis, DeLara and Adkins, standing alone, were insufficient to meet claimant's burden of establishing that the miner's death was due to pneumoconiosis at Section 718.205(c), and acted within her discretion in finding that Dr. Repsher's opinion, that the miner's death was not hastened by pneumoconiosis or chronic obstructive pulmonary disease but was due to a myocardial infarction (MI) occurring over a matter of minutes, was the best reasoned of record. In this regard, the administrative law judge determined that Dr. Repsher's opinion was better explained and supported by the opinion of Dr. Caffrey, who detailed how the pathological findings supported a finding of sudden death from an acute MI or ventricular fibrillation (cardiac arrhythmia), as well as by the opinions of Drs. Roggli and Ghio, that the miner's death was unrelated to pneumoconiosis. Decision and Order at 22; *see Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985).

Lastly, we note that the status of a treating physician is but one factor to be considered by the administrative law judge in weighing medical evidence. *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003). In the instant case, the administrative law judge permissibly determined that, given the lack of reasoning supporting Dr. Adkins' opinion, she could not give it controlling weight under 20 C.F.R. §718.104(d), despite his status as the miner's treating physician. Decision and Order at 21; *Williams*, 338 F.3d 501, 22 BLR 2-625; *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-22. Furthermore, an administrative law judge may not automatically credit the conclusions of any autopsy prosector, but must supply a valid rationale for adopting them. *Urgolites v. BethEnergy Mines*, 17 BLR 1-20 (1992). As we have found no error in the administrative law judge's weighing of the conflicting evidence of record, we affirm her finding that claimant failed to meet her burden of establishing death due to

pneumoconiosis under Section 718.205(c), as supported by substantial evidence, and we further affirm her denial of survivor's benefits. *Trumbo*, 17 BLR at 1-87.

In light of the foregoing, and in view of employer's concession, *supra*, see n.1, we need not reach employer's arguments on cross-appeal.

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