

BRB No. 07-0826 BLA

I.W. )  
(Widow of M.W.) )  
 )  
Claimant-Petitioner )  
 )  
v. ) DATE ISSUED: 06/24/2008  
 )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
Respondent ) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan,  
Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Barry H. Joyner (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<sup>1</sup> appeals the Decision and Order (07-BLA-5013) of Administrative Law  
Judge Robert D. Kaplan 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

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<sup>1</sup> Claimant is the widow of the miner, who died on September 17, 2005.  
Claimant's Exhibit 2. The miner was awarded benefits on a lifetime claim, which is not  
before the Board in this appeal. Claimant filed the instant survivor's claim on November  
15, 2005. Director's Exhibit 2.

miner with eleven years of coal mine employment<sup>2</sup> and found the existence of pneumoconiosis arising out of coal mine employment established, based on the parties' stipulations, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. Decision and Order at 2; Hearing Transcript at 7. The administrative law judge found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's weighing of the medical opinion evidence pursuant to 20 C.F.R. §718.205(c). The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the administrative law judge's denial of benefits.<sup>3</sup>

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).

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 the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1)-(c)(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); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989). Failure to establish any one of these elements

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<sup>2</sup> The law of the United States Court of Appeals for the Third Circuit is applicable as the miner was last employed in the coal mining industry in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

<sup>3</sup> We affirm, as unchallenged on appeal, the administrative law judge's findings of eleven years of coal mine employment, and the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202, 718.203. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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).

Relevant to 20 C.F.R. §718.205(c), the record contains the miner's death certificate and the medical opinions of Drs. Kraynak, Simelaro, and Sherman. Director's Exhibits 3, 7, 11; Claimant's Exhibit 2. In considering this evidence, the administrative law judge discounted the miner's death certificate and the opinions of Drs. Kraynak and Simelaro, all of which attributed the miner's death to pneumoconiosis. Decision and Order at 4-7; Director's Exhibit 3, 11; Claimant's Exhibit 2. Additionally, the administrative law judge credited Dr. Sherman's contrary opinion that there was no "evidence that coal workers' pneumoconiosis caused, contributed to, or hastened [the miner's] death." Decision and Order at 6; Director's Exhibit 7.

Although claimant does not challenge the administrative law judge's weighing of the death certificate,<sup>4</sup> claimant asserts that the administrative law judge failed to accord appropriate weight to Dr. Kraynak's opinion, given that he was the miner's treating physician. Claimant's Brief at 15. Claimant further asserts that the administrative law judge failed to state a valid reason for discrediting the opinions of Drs. Kraynak and Simelaro or for crediting Dr. Sherman's opinion. *Id.* at 14-18. Claimant's assertions lack merit.

The administrative law judge permissibly discredited the opinions of Drs. Kraynak and Simelaro because the physicians failed to explain how pneumoconiosis hastened or contributed to the miner's death. *See Lango v. Director, OWCP*, 104 F.3d 573, 577, 21 BLR 2-12, 2-20-21 (3d Cir. 1997). Substantial evidence supports this finding. Director's Exhibit 11; Claimant's Exhibit 2. Further, contrary to claimant's assertion, Dr. Kraynak's status as the miner's treating physician does not automatically entitle his opinion to additional weight. *See* 20 C.F.R. §718.104(d)(5); *Lango*, 104 F.3d at 577, 21 BLR at 2-20-21. Moreover, because the administrative law judge permissibly discounted claimant's favorable evidence, any error that the administrative law judge may have made in crediting Dr. Sherman's report is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Therefore, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Consequently, we affirm the administrative law judge's denial of benefits.

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<sup>4</sup> The administrative law judge discounted the miner's death certificate, which listed the causes of death as lung cancer and anthracosilicosis, because it was not prepared by a physician and because it contained no explanation of the basis for its conclusions. Decision and Order at 4; Director's Exhibit 3.

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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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge