

BRB No. 97-1416 BLA

DIANE CIANNILLI )  
(Widow of JOSEPH CIANNILLI) )

Respondent Claimant- )  
Respondent )

v. )

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, )  
UNITED STATES DEPARTMENT OF )  
LABOR )

DATE ISSUED:

Petitioner

DECISION AND ORDER

Appeal of the Decision and Order Awarding Benefits of Ralph A. Romano,  
Administrative Law Judge, United States Department of Labor.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania,  
for claimant.

Helen H. Cox (Marvin Krislov, Deputy Solicitor for National Operations;  
Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy  
Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH and BROWN,  
Administrative Appeals Judges.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director),  
appeals the Decision and Order Awarding Benefits (96-BLA-1559) of  
Administrative Law Judge Ralph A. Romano 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). Based on the award of benefits in  
the miner's claim, the administrative law judge found the evidence sufficient to

establish the existence of pneumoconiosis arising out of the miner's coal mine employment.<sup>1</sup> The administrative law judge further found the medical evidence insufficient to establish that the immediate cause of the miner's death was pneumoconiosis. 20 C.F.R. §718.205(c)(1). However, the administrative law judge found the medical evidence of record sufficient to establish that the miner's death was substantially contributed to by the presence of pneumoconiosis. 20 C.F.R. §718.205(c)(2). Accordingly, the administrative law judge awarded benefits.

On appeal, the Director challenges the administrative law judge's award of benefits, arguing that the administrative law judge erred in according determinative weight to the medical opinion of Dr. Lazar over the contrary opinion of Dr. Spagnolo. Specifically, the Director contends that the administrative law judge

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<sup>1</sup> Claimant is the widow of the miner, Joseph Ciannilli, who died on July 5, 1995, see Director's Exhibit 2. The miner was awarded federal black lung benefits, on a claim filed January 26, 1983, by Administrative Law Judge Ainsworth H. Brown in a Decision and Order issued on October 19, 1989. Director's Exhibit 13.

Inasmuch as the miner's claim was filed after January 1, 1982, claimant is not entitled to an award of benefits derivative of the miner's award. Rather, claimant must establish entitlement to benefits, in her own right, pursuant to 20 C.F.R. Part 718. Director's Exhibit 13; 20 C.F.R. §§725.212; 718.205; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); see also *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989).

erred in finding the medical opinion of Dr. Lazar reasoned and documented and, therefore, sufficient to establish entitlement to benefits. In response, claimant urges affirmance of the administrative law judge's award of benefits.<sup>2</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 supported by substantial evidence, is rational, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on a survivor's claim filed on or after January 1, 1982 only when claimant meets her burden of establishing that the miner's death was due to pneumoconiosis, where pneumoconiosis was a substantially contributing cause of death, where death was caused by complications of pneumoconiosis, or where complicated pneumoconiosis is established. 20 C.F.R. §§718.201, 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). Moreover, the United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises, has held that, pursuant to Section 718.205(c)(2), pneumoconiosis substantially contributes to death if it hastens the miner's death. *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

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<sup>2</sup> Since the parties do not challenge the administrative law judge's finding that the miner suffered from pneumoconiosis arising out of his coal mine employment, or his findings that claimant did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(1) and (c)(3), those findings are affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

After consideration of the administrative law judge's Decision and Order, the issues raised on appeal and the relevant evidence of record, we conclude that substantial evidence supports the administrative law judge's findings that the medical evidence of record is sufficient to meet claimant's burden of establishing that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to Section 718.205(c)(2). The Director challenges the administrative law judge's decision to accord determinative weight to the opinion of Dr. Lazar, the miner's treating physician, contending that the opinion of Dr. Lazar is not reasoned and documented inasmuch as the physician did not provide a basis for his opinion that pneumoconiosis hastened the miner's death. The administrative law judge, however, implicitly and properly found this opinion sufficiently reasoned and documented inasmuch as the administrative law judge determined that Dr. Lazar, in addition to having performed physical examinations of the miner, also reviewed the medical records of the miner's hospitalization and surgery in opining that pneumoconiosis contributed to the miner's death.<sup>3</sup> Decision and Order at 3-4;

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<sup>3</sup> In his deposition, Dr. Lazar explained his history as the miner's treating physician, noting that he treated the miner every three months since 1981 for his lung problems, and was last seen in his office on June 21, 1995. Claimant's Exhibit 2. In treating the miner, Dr. Lazar noted irregularities on physical examination, such as rhonchi and wheezes associated with the diagnosis of coal workers' pneumoconiosis. *Id.* at pp. 12-13. The physician also stated that he observed that patient was short of breath and noted a cough and that the miner had trouble sleeping due to shortness of breath. *Id.* Dr. Lazar stated that these symptoms and complaints were compatible with coal workers' pneumoconiosis and were consistent throughout the entire course of treatment. Dr. Lazar also stated the miner's pulmonary condition progressed to worse over a period of time. *Id.* Dr. Lazar then noted that he completed the miner's death certificate, listing the immediate cause of the miner's death as a cerebral vascular accident and atherosclerotic cardiovascular disease and coal workers' pneumoconiosis as contributory causes of death, after reviewing his medical records and the records of the miner's last hospitalization as well as after consultation with Dr. Foldes, the surgeon who performed the coronary bypass surgery. *Id.* at pp. 15-16, 27.

In summarizing his opinion, Dr. Lazar stated that the direct cause of the miner's death was life-threatening arrhythmia, which he felt was prompted by the worsening of the miner's pulmonary condition. *Id.* at p. 18. Dr. Lazar also noted that the miner had successful coronary bypass surgery because his cardiac condition was stable following the surgery even though he suffered a stroke in connection with the surgery. Nonetheless, Dr. Lazar opined that coal workers' pneumoconiosis contributed to the miner's death in that the miner's ultimate demise was secondary

Director's Exhibits 2, 5, 6; Claimant's Exhibit 2; see *Pulliam v. Drummond Coal Co.*, 7 BLR 1-846 (1985); *Adamson v. Director, OWCP*, 7 BLR 1-229 (1984); see also *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985). Moreover, the administrative law judge reasonably accorded greater weight to the opinion of Dr. Lazar on the basis that Dr. Lazar was in a better position as treating physician to provide an opinion as to the effect of the miner's pneumoconiosis on his death. See *Schaaf v. Mathews*, 574 F.2d 160 (3d Cir. 1978); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989).

Lastly, the Director's arguments concerning the administrative law judge's decision to credit the medical opinion of Dr. Lazar over the contrary opinion of Dr. Spagnolo, who stated that pneumoconiosis was not a substantially contributing cause of the miner's death, are tantamount to a request to reweigh the evidence, which the Board is not empowered to do. *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, since it was within a reasonable exercise of his discretion, we affirm the administrative law judge's determination that the evidence of record is sufficient to establish that pneumoconiosis was a substantially contributing cause of the miner's death. 20 C.F.R. §718.205(c)(2); *Lukosevicz, supra*; see also *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

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to a worsening of his pulmonary problems as it lead to his ventricular fibrillation and death. Specifically, Dr. Lazar opined that the miner had a weakened heart and weakened lungs and that if he had normal lungs, he may have been able to live longer and compensate for his weak heart. *Id.* at pp. 19-20.

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

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge