

BRB Nos. 00-0572 BLA
and 00-0572 BLA-A

BETTY JEAN RAMSEY)
(Widow of GILBERT JAMES RAMSEY))
)
 Claimant-Petitioner)
)
 v.)
)
ZEIGLER COAL COMPANY)
)
 Employer-Respondent)
)
) DATE ISSUED: _____
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
) DECISION and ORDER
 Party-in-Interest)

Appeal of the Decision and Order of Rudolf L. Jansen, Administrative Law Judge,
United States Department of Labor.

Joseph J. Reiswerg, Indianapolis, Indiana, for claimant.

Laura Metcoff Klaus (Arter & Hadden LLP), Washington, D.C., for employer.

Timothy S. Williams (Judith E. Kramer, Acting Solicitor of Labor; 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: SMITH, McGRANERY, and McATEER, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (99-BLA-0317) of Administrative Law

¹Claimant is Betty Jean Ramsey, widow of Gilbert James Ramsey, who filed her second
claim for benefits on March 30, 1998. Director's Exhibit 1. Claimant filed an earlier claim

Judge Rudolf L. Jansen 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).² The administrative law judge credited the miner with thirty-three years of coal mine employment pursuant to the parties' stipulations, Hearing Transcript at 9. Decision and Order at 4. Employer stipulated to the existence of

for benefits on June 13, 1995. Director's Exhibit 13. The administrative law judge determined that since claimant properly requested a formal hearing on her first claim, which did not take place, her first claim was still viable and, therefore, merged with her second claim. Order Denying Motion for Summary Decision at 6.

The miner filed his first claim for benefits on December 23, 1982, which was finally denied by the district director on May 4, 1983. Director's Exhibit 12. The miner's second claim for benefits, filed on February 8, 1985, was finally denied by Administrative Law Judge Charles W. Campbell on July 14, 1992. Director's Exhibit 12.

²The Department of Labor amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

pneumoconiosis arising out of coal mine employment, Hearing Transcript at 9. *See* Decision and Order at 10. Applying the regulations at 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) (2000), citing *Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992).³ Decision and Order at 10-11. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in weighing the medical opinions pursuant to Section 718.205(c) (2000). Claimant's Brief at 2-4. Employer filed a combined brief and cross-appeal, urging affirmance of the denial of benefits based on substantial evidence, or, urging denial of this duplicate survivor's claim as a matter of law. Employer's Brief at 14-18. The Director, Office of Workers' Compensation Programs (the Director), responds and states that the administrative law judge's determination not to deny this claim as a matter of law was reasonable. Director's Brief at 1-2.

³The new regulations codify the standard enunciated in *Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992), that 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).

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on February 21, 2001, to which both employer and the Director have responded.⁴ Claimant has not filed a response.⁵ Based on the briefs submitted by the parties, and our review, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, the Board will proceed to adjudicate the merits of this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Pursuant to Section 718.205(c) (2000), the administrative law judge found that the evidence does not establish that “the miner’s death was due to or hastened by pneumoconiosis.” Decision and Order at 11. The administrative law judge noted that the death certificate, signed by the miner’s treating physician, Dr. Husain, did not acknowledge pneumoconiosis as a contributing cause or condition to the miner’s death, Director’s Exhibit 13. Decision and Order at 11. The administrative law judge properly found the death certificate to be “highly probative” evidence inasmuch as it was completed by Dr. Husain,

⁴Both the Director and employer in their briefs, dated March 1, 2001 and March 14, 2001, respectively, assert that the regulations at issue in the lawsuit do not affect the outcome of this case.

⁵Pursuant to the Board’s instructions, the failure of a party to submit a brief within 20 days following receipt of the Board’s Order issued on February 21, 2001, would be construed as a position that the challenged regulations will not affect the outcome of this case.

who treated the miner on more than one occasion and during his final hospitalization. Decision and Order at 11; *Berta v. Peabody Coal Co.*, 16 BLR 1-69 (1992); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge also rationally determined that Dr. Uzoaru's finding on autopsy, that the "anthracotic lesions may just be the inciting stimulus [sic] for the progression of disease in this patient causing demise," Director's Exhibit 13, was equivocal. Decision and Order at 11; see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); see also *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985).

Additionally, the administrative law judge noted that Drs. Naeye, Tuteur, and Renn all found that although the miner had simple pneumoconiosis, it was too mild to have contributed to or hastened his death. Director's Exhibit 11; Employer's Exhibits 1-4; Decision and Order at 11. The administrative law judge accorded the opinions of Drs. Tuteur and Renn "great probative weight, because of their superior credentials and expertise in the field of pulmonary medicine."⁶ Decision and Order at 11. Claimant contends that because Drs. Renn and Tuteur were paid by employer for their opinions, these physicians were biased against claimant's position. Claimant's Brief at 3-4. We reject claimant's assertion inasmuch as there is no evidence in the record to support claimant's assertion that Drs. Renn and Tuteur were biased against claimant. See *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*); see also *Cochran v. Consolidation Coal Co.*, 16 BLR 1-101 (1993).

Claimant also contends that the administrative law judge erred in failing to accord greater weight to Dr. Uzoaru's autopsy report, which, claimant contends, is better evidence regarding the cause of death, than the opinions of Drs. Renn and Tuteur, which were based on reviews of the autopsy report. Claimant's Brief at 2-4. Contrary to claimant's contention, by finding Dr. Uzoaru's opinion regarding the cause of the miner's death to be equivocal, the administrative law judge deemed this physician's opinion to be insufficient to support claimant's burden at Section 718.205(c) (2000). See discussion, *supra*. Because there is no other medical evidence in the record to support claimant's burden of proof at Section 718.205(c), we hold that the administrative law judge permissibly found that claimant failed to establish that the miner's death was due to pneumoconiosis. Decision and Order at 11; see

⁶Dr. Renn is Board-certified in internal medicine, pulmonary disease, and forensic medicine and is a B-reader. Employer's Exhibit 2. Dr. Tuteur is Board-certified in internal medicine and pulmonary disease. Employer's Exhibit 1. Dr. Uzoaru's credentials are not in the record, although the word "pathologist" appears after his signature.

Director, OWCP v. Greenwich Collieries [Ondecko], 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Railey, supra*; *Maddaleni v. Director, OWCP*, 961 F.2d 1524, 16 BLR 2-68 (10th Cir. 1992); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Inasmuch as we affirm the administrative law judge's Section 718.205(c) (2000) finding, that claimant failed to establish that the miner's death was due to pneumoconiosis, a requisite element of entitlement under Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director*, 9 BLR 1-1 (1986)(*en banc*); *see also Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993), we also affirm his denial of benefits on the survivor's claim, and, therefore, need not address the arguments, regarding 20 C.F.R. §725.309(d) (2000), raised in employer's cross-appeal.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

J. DAVITT McATEER
Administrative Appeals Judge