

BRB No. 01-0610 BLA

JEANETTE SOCKO	)	
(Widow of LEONARD SOCKO)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED )	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

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

Jeanette Socko, Coal Township, Pennsylvania, *pro se*.

Jeffrey S. Goldberg (Eugene Scalia, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow,<sup>1</sup> appeals the Decision and Order - Denial of Benefits (00-BLA-0566) of Administrative Law Judge Ralph A. Romano denying claimant's request for modification of the denial of 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).<sup>2</sup> In a previous Decision and Order, dated February 12, 1999, the

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<sup>1</sup>The miner's death certificate indicates that he died on May 4, 1996 due to a ruptured aortoiliac aneurysm and cardiac arrest. Director's Exhibit 5. Claimant filed the instant survivor's claim on August 30, 1996. Director's Exhibit 1.

<sup>2</sup>The Department of Labor has amended the regulations implementing the Federal

administrative law judge found, based on the stipulations of the parties, that claimant established approximately twelve and one-half years of coal mine employment and that the miner had pneumoconiosis and was totally disabled. Director's Exhibit 60. The administrative law judge noted that the miner was receiving benefits under the Act at the time of his death pursuant to a 1989 award of benefits. Director's Exhibit 60 at 3 n.3; *see*

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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.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, 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, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001). The court's decision renders moot those arguments made by the Director, Office of Workers' Compensation Programs, regarding the impact of the challenged regulations.

Director's Exhibit 40-9. On the merits of the claim, the administrative law judge found that the evidence failed to establish that the miner's death was due to pneumoconiosis under 20 C.F.R. §718.205(c) (2000) pursuant to *Lukosevich v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989). Accordingly, the administrative law judge denied benefits.

On October 1, 1999 claimant requested modification of the administrative law judge's February 12, 1999 Decision and Order and submitted Dr. Kraynak's letter dated September 7, 1999. Director's Exhibit 51. Dr. Kraynak opined therein that the miner's coal workers' pneumoconiosis "put a significant strain on his cardiovascular system which indeed hastened his death. It is clear that coal workers' pneumoconiosis was a substantially contributing factor in Mr. Socko's death." *Id.* On December 1, 1999, the district director issued a proposed Decision and Order denying claimant's request for modification. Director's Exhibit 55. Pursuant to claimant's request, the case was transferred to the Office of Administrative Law Judges for a hearing. Director's Exhibits 58, 59, 62, 63. The Director, Office of Workers' Compensation Programs (the Director), then submitted Dr. Sherman's consultative report dated June 25, 2000, in which the physician opined that the miner's pneumoconiosis did not cause or contribute to his death. Director's Exhibit 64. Pursuant to the parties' subsequent agreement, the administrative law judge determined the case on the record.

In his Decision and Order dated March 21, 2001, the administrative law judge found, based on his weighing of the newly submitted evidence considered in conjunction with the previously submitted evidence, that his 1999 Decision and Order contained no mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000).<sup>3</sup> On the merits of the claim, based on his consideration of the record as a whole, the administrative law judge found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis under 20 C.F.R. §718.205(c) (2000). Accordingly, the administrative law judge denied claimant's request for modification and the claim.

In response to claimant's appeal, the Director urges the Board to affirm the decision below as it is supported by substantial evidence and in accordance with law.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational,

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<sup>3</sup>The amendments to the regulation at 20 C.F.R. §725.310 (2000) do not apply to claims, such as the instant claim, which were pending on January 19, 2001. 20 C.F.R. §725.2.

supported by substantial evidence, and in accordance with law. 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).

In order to establish entitlement to benefits in a survivor’s claim filed after January 1, 1982, such as in the instant case, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. See 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c); *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). Under 20 C.F.R. §718.205(c)(2), death will be considered to be due to pneumoconiosis if pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death. Pursuant to the revised regulation at 20 C.F.R. §718.205(c)(5), 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).<sup>4</sup>

We affirm the administrative law judge’s determination that the evidence fails to establish that the miner’s death was due to pneumoconiosis as it is supported by substantial evidence and is in accordance with law. 20 C.F.R. §718.205(c). We thus also affirm the administrative law judge’s finding that his prior Decision and Order denying survivor’s benefits contains no mistake in a determination of fact under 20 C.F.R. §725.310 (2000).<sup>5</sup> Specifically, the administrative law judge properly determined that Dr. Kraynak’s opinion, that the miner’s coal workers’ pneumoconiosis was a substantially contributing factor in his death, Director’s Exhibits 13, 52, which is the only evidence of record supportive of claimant’s burden at 20 C.F.R. §718.205(c), was neither well reasoned nor well documented. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The administrative law judge found that Dr. Kraynak failed to explain adequately why the miner “would have lived longer absence (sic) coal workers’ pneumoconiosis,” Director’s Exhibit 52, in light of the miner’s significant cardiac history and

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<sup>4</sup>The revised regulation at 20 C.F.R. §718.205(c)(5) is consistent with the decision of the United States Court of Appeals for the Third Circuit, within whose jurisdiction the instant case arises, in *Lukosevich v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989)(pneumoconiosis is a substantially contributing cause of a miner’s death under 20 C.F.R. §718.205(c)(2) (2000) where the disease actually hastens his death).

<sup>5</sup>The administrative law judge properly determined that the sole ground for modification available to claimant is by establishing that a mistake in a determination of fact was made in the administrative law judge’s prior denial of survivor’s benefits, since there cannot be a change in the deceased miner’s condition. 20 C.F.R. §725.310 (2000); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); Decision and Order at 4.

his leaking abdominal aneurysm. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988). The administrative law judge further found:

Dr. Kraynak's newly submitted medical report is but a reiteration of his opinion previously given. It is no better reasoned or documented. This being the case, his status as "treating physician" does not render his report worthy of greater weight than those of Drs. Michos, Levinson and Sherman. *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). His opinion also cannot rebut the findings rendered by those physicians who treated the Miner at the time of his death, i.e., Drs. Harold Smith, Scott Ekin and Charles Bendoit. (DX 11). None of these physicians mentioned pneumoconiosis as a cause of the Miner's chief complaint or reason for treatment at that time.

Decision and Order at 6. These findings by the administrative law judge are supported by substantial evidence in the record and are in accordance with law. *See Mancina v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-215 (3d Cir. 1997); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). Moreover, the administrative law judge correctly noted that the miner's death certificate does not mention pneumoconiosis or any pulmonary condition, but lists the immediate cause of death as a ruptured aortoiliac aneurysm and cardiac arrest. Director's Exhibit 5.

Further, the administrative law judge indicated, within his discretion, that he continued to find that the opinions of Drs. Michos and Levinson, that the miner's pneumoconiosis did not cause, contribute to, or hasten his death, Director's Exhibits 16, 44, were more persuasive than Dr. Kraynak's opinion. *Clark, supra*. He added that Dr. Sherman's newly submitted report was well reasoned and well documented, "qualities the reports of Dr. Kraynak lack." Decision and Order at 5; *Clark, supra*; *Fields, supra*. The administrative law judge thus permissibly concluded that Dr. Sherman's opinion, that the miner's pneumoconiosis did not cause or contribute to his death, Director's Exhibit 64, was entitled to greater weight than Dr. Kraynak's opinion. *See Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). The administrative law judge also found that Drs. Michos, Levinson and Sherman each possessed superior credentials to those of Dr. Kraynak. *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). Substantial evidence thus supports the administrative law judge's decision to accord less weight to Dr. Kraynak's opinion, the only evidence of record supportive of claimant's case. We, therefore, affirm the administrative law judge's finding that claimant did not meet her burden to establish that the miner's death was due to pneumoconiosis, *see* 20 C.F.R. §718.205(c)(2), (c)(5), and did not establish a mistake in a determination of fact under 20 C.F.R. §725.310 (2000).

Based on the foregoing, we affirm the administrative law judge's denial of claimant's request for modification of the administrative law judge's Decision and Order dated February 12, 1999 as claimant failed to establish a mistake in a determination of fact therein under 20

C.F.R. §725.310 (2000). We further affirm the administrative law judge's finding that claimant has not established her entitlement to benefits in the instant survivor's claim.

Accordingly, we affirm the administrative law judge's Decision and Order - Denial of Benefits.

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