

BRB No. 02-0644 BLA

WILDA J. CAUDILL)
(Widow of ELBERT L. CAUDILL))

Claimant-Petitioner)

v.)

BETHENERGY MINES, INCORPORATED)

DATE ISSUED:

and)

BETHLEHEM STEEL CORPORATION,)
c/o ACCORDIA EMPLOYERS SERVICE)

Employer/Carrier-)
Respondents)

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

Party-in-Interest)

DECISION and ORDER

Appeal of the Decision and Order of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Wilda J. Caudill, Letcher, Kentucky, *pro se*.

Natalie D. Brown (Jackson & Kelly, PLLC), Lexington, Kentucky, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ representing herself, appeals the Decision and Order (01-BLA-0451) of

Administrative Law Judge Thomas F. Phalen, Jr. 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 instant case involves a survivor's claim filed on September 29, 1999.³ After crediting the miner with at least sixteen years of coal mine employment, the administrative law judge found that the evidence was insufficient to 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 generally contends that the administrative law judge erred in denying benefits. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue 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 findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

Because the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁴ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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 *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

While Drs. Bielecki and Caudill opined that the miner's death was due to pneumoconiosis, Director's Exhibits 9, 12, 13, 36; Claimant's Exhibit 1, Drs. Naeye, Crouch, Caffrey and Jarboe opined that the miner's death was not due to pneumoconiosis.⁵ Director's Exhibits 34, 35, 37-40; Employer's Exhibits 1, 3, 4.

Dr. Bielecki, the miner's attending physician, completed the miner's death certificate on September 20, 1999.⁶ Director's Exhibit 9. Dr. Bielecki listed the miner's immediate cause of death as olivopontocerebellar degeneration. *Id.* Dr. Bielecki also listed COPD, recurrent aspiration pneumonia and abdominal abscess as "other significant conditions" contributing to the miner's death. *Id.* Because Dr. Bielecki did not attribute the immediate cause of death, or the listed contributing conditions, to the

miner's coal dust exposure, see 20 C.F.R. §718.201(a)(2), we hold that the miner's death certificate is insufficient to support a finding that the miner's death was due to pneumoconiosis.

In a subsequent two-sentence letter dated October 18, 2000, Dr. Bielecki stated that:

I was [the miner's] attending physician at the time of his death. It is my medical opinion that his black lung condition not only contributed to his death but hastened his death.

Director's Exhibit 36.

Because Dr. Bielecki provided no explanation for her opinion that the miner's death was caused by his "black lung," the administrative law judge properly found her opinion was not sufficiently reasoned. See *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 8.

Dr. Caudill, the miner's treating physician, also opined that the miner's death was due to his pneumoconiosis. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction the instant case arises, has held that although the opinion of a treating physician merits proper deference, the opinion must be "properly credited and weighed." *Peabody Coal Co. v. Groves*, 277 F.3d 829, 834, 22 BLR 2-320, 2-326 (6th Cir. 2002). Although Dr. Caudill opined that the miner's death was contributed to by his black lung disease, Dr. Caudill provided no explanation for his finding.⁷ Claimant's Exhibit 1. The administrative law judge, therefore, properly found that Dr. Caudill's opinion was not sufficiently reasoned. See *Rowe, supra*; *Lucostic, supra*; Decision and Order at 8.

There is no other medical evidence of record supportive of a finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Drs. Naeye, Crouch, Caffrey and Jarboe opined that the miner's death was not due to pneumoconiosis.⁸ The administrative law judge acted within his discretion in crediting the opinions of Drs. Naeye, Crouch, Caffrey and Jarboe over the opinions of Drs. Caudill and Bielecki based upon their superior qualifications.⁹ See *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Decision and Order at 8-9. Inasmuch as it is supported by substantial evidence, the administrative law judge's finding that the medical opinion evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) is affirmed.

Finally, because there is no evidence of complicated pneumoconiosis in the record,⁹ claimant is precluded from establishing entitlement based on the irrebuttable

presumption at 20 C.F.R. §718.304. See 20 C.F.R. §718.205(c)(3).

In light of our affirmance of the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718.

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

REGINA C. McGRANERY
Administrative Appeals Judge