

BRB No. 03-0502 BLA

FLORENCE MEADE )  
(Widow of HOWARD MEADE) )  
 )  
Claimant-Petitioner )

v. )

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

DATE ISSUED: 03/08/2004

DECISION and ORDER

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

Leonard Slayton, Inez, Kentucky, for claimant.

Sarah M. Hurley (Howard M. Radzely, Solicitor of Labor; Donald S. Shire,  
Associate Solicitor; Rae Ellen Frank James, Deputy 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, HALL and  
GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow,<sup>1</sup> appeals the Decision and Order – Denying Benefits  
(02-BLA-0286) of Administrative Law Judge Rudolf L. Jansen (the administrative law  
judge) denying claimant's second request for modification in a claim for survivor's

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<sup>1</sup> Claimant filed a claim for survivor's benefits on January 25, 1994. Director's  
Exhibit 1. The miner's death certificate indicates that he died on September 28, 1993 due  
to pneumonia. Director's Exhibit 4. Chronic obstructive pulmonary disease and  
coronary artery disease are listed as other conditions contributing to death. *Id.*

benefits 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> The administrative law judge noted that, by Decision and Order dated July 17, 2000, he had denied claimant's August 31, 1999 request for modification based on claimant's failure to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c), and that claimant had subsequently filed the instant request for modification on July 16, 2001. The administrative law judge considered the evidence submitted since the prior denial of benefits, namely records from the miner's final hospitalization, Director's Exhibit 28; Dr. Moneyhun's March 12, 2002 medical opinion, Director's Exhibit 29; and Dr. Baker's November 6, 2002 report, Claimant's Exhibit 1,<sup>3</sup> in conjunction with the previously filed evidence. The administrative law judge found no mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000)<sup>4</sup> in the prior denial and determined that the evidence was insufficient to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied claimant's request for

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<sup>2</sup> The Department of Labor has 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 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>3</sup> The miner was hospitalized at Saint John's in Anderson, Indiana from September 16, 1993 until his death on September 28, 1993. Director's Exhibit 28. Dr. Moneyhun's October 22, 1993 Discharge Summary includes the following diagnoses: right upper lobe pneumonia; chronic obstructive pulmonary disease, and coronary artery disease. *Id.* at 2. The records from this hospitalization do not identify the cause of the miner's chronic obstructive pulmonary disease.

Dr. Moneyhun, in a one-sentence opinion dated March 12, 2002, stated: "Mr. Howard Meade's pneumoconiosis caused some fibrous induration of his lungs due to the irritation of the dust associated with reduced excursion of his chest." Director's Exhibit 29.

Dr. Baker, in his November 6, 2002 opinion, stated, *inter alia*, "I would think [the miner's] Coal Workers' Pneumoconiosis would be a contributing factor as it was part of the etiology of his obstructive airway disease, which was one of the reasons his pneumonia did not resolve and was perhaps the cause of his death." Claimant's Exhibit 1.

<sup>4</sup> The amendments to the regulation at 20 C.F.R. §725.310 do not apply to claims, such as the instant claim, which were pending on January 19, 2001. *See* 20 C.F.R. §725.2, 65 Fed. Reg. 80,057.

modification and the claim. On appeal, claimant alleges reversible error in the administrative law judge's finding that Dr. Baker's November 11, 2002 opinion regarding the cause of the miner's death is equivocal and therefore not well reasoned. Claimant requests that the Board vacate the decision below and remand the case for a reweighing of Dr. Baker's opinion. The Director, Office of Workers' Compensation Programs, responds, and urges the Board to affirm the decision below as it is supported by substantial evidence.

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 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 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). Further, in order to establish modification of the prior denial of benefits in the instant survivor's claim, claimant must establish a mistake in a determination of fact in the prior denial. 20 C.F.R. §725.310 (2000); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989). The Board previously affirmed the administrative law judge's finding that the evidence established the existence of pneumoconiosis that arose out of the miner's coal mine employment at 20 C.F.R. §§718.202 and 718.203. *Meade v. Director, OWCP*, BRB No. 98-1278 BLA (May 26, 1999)(unpublished), slip op. at 2 n.2.

Claimant, citing *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999), alleges reversible error in the administrative law judge's finding that Dr. Baker's November 6, 2002 opinion, as it relates to the issue of the cause of the miner's death, is equivocal. Dr. Baker opined, in his November 6, 2002 consultative report:

In summary, this gentleman had obstructive airway disease, history of cigarette smoking, history of coal dust exposure and has been determined by the Department of Labor to have Coal Workers' Pneumoconiosis. He did die from pneumonia. The presence of obstructive airway disease and

chronic bronchitis, which would be related to both cigarette smoking and his coal dust exposure, perhaps in an equal amount, would result in his inability to fight the infection due to a number of physiological mechanisms that may be impaired in obstructive airway disease which is caused in part, and perhaps to a significant degree, to [sic] his Coal Workers' Pneumoconiosis. I would think his Coal Workers' Pneumoconiosis would be a contributing factor as it was part of the etiology of his obstructive airway disease, which was one of the reasons his pneumonia did not resolve and was perhaps the cause of his death.

Claimant's Exhibit 1. Claimant submits that the administrative law judge should not have found Dr. Baker's opinion to be equivocal because it "is written more positively than was the report of Dr. Stefanini" in *Mays*. Claimant's Brief at 12. Claimant argues that while Dr. Baker did use the word "perhaps" in his opinion, Dr. Baker specifically stated that the miner "had died from pneumonia and that coal workers' pneumoconiosis would have contributed to [the miner's] inability to fight the infection. Thus, Dr. Baker's opinion, when read in its entirety, reflects that Dr. Baker was not equivocal in stating that pneumoconiosis had contributed to [the miner's] death." *Id.*

Claimant's contentions lack merit. It is the duty of the administrative law judge, as trier of fact, to weigh the medical evidence and make credibility determinations. *Riley v. National Mines Corp.*, 852 F.2d 197, 11 BLR 2-182 (6th Cir. 1988). In the instant case, the administrative law judge rationally accorded less weight to Dr. Baker's November 6, 2002 opinion because he found the opinion to be equivocal and therefore not well reasoned. *Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 22 BLR 2-25 (6th Cir. 2000); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). Substantial evidence in the record supports the administrative law judge's finding. See Claimant's Exhibit 1. Claimant's argument that the administrative law judge should not have found Dr. Baker's opinion to be equivocal because that opinion, when read in its entirety, is *not* equivocal, amounts to a request that the Board reweigh the evidence and substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). We, therefore, reject claimant's arguments.<sup>5</sup>

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<sup>5</sup> Claimant's reliance on the case of *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999) is unavailing. The United States Court of Appeals for the Fourth Circuit in *Mays* limited its findings pertaining to Dr. Stefanini's opinion to the facts and circumstances of that case. *Mays*, 176 F.3d at 763, 21 BLR at 2-605. Furthermore, the instant case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, *Shupe v. Director*,

Inasmuch as claimant makes no other argument on appeal, we affirm the administrative law judge's finding that the evidence fails to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c) as it is rational, in accordance with law, and supported by substantial evidence. We, therefore, affirm the administrative law judge's denial of claimant's request for modification and the claim for survivor's benefits.

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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BETTY JEAN HALL  
Administrative Appeals Judge

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PETER A. GABAUER, Jr.  
Administrative Appeals Judge

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*OWCP*, 12 BLR 1-200 (1989)(*en banc*), whereas *Mays* is a decision by the Fourth Circuit. Therefore, *Mays* is not binding precedent in this case.