

BRB No. 05-0183 BLA

LEAH A. GEIST	)	
(Widow of EARL M. GEIST)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 05/24/2006
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2004-BLA-05085) of Administrative Law Judge Janice K. Bullard with respect to 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>1</sup> The administrative law judge

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<sup>1</sup> Claimant is the surviving spouse of a deceased miner. The miner was awarded benefits on a claim filed during his lifetime in a Decision and Order issued by Administrative Law Judge Ainsworth H. Brown on May 19, 1999. Director's Exhibit 1.

weighed the evidence of record relevant to the cause of the miner's death and determined that it was insufficient to establish that pneumoconiosis caused or contributed to the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

Claimant argues on appeal that the administrative law judge did not properly weigh the medical opinion evidence pursuant to Section 718.205(c). The Director, Office of Workers' Compensation Programs, has responded and urges affirmance of the denial of benefits.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718 in a claim filed after January 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1; 718.202; 718.203; 718.205(c); 718.304. Pneumoconiosis is a substantially contributing cause of the miner's death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5); see *Lukosevich v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); *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).<sup>2</sup>

With respect to the administrative law judge's consideration of the medical opinions of record under Section 718.205(c), claimant asserts that the administrative law judge erred in neglecting to consider the miner's death certificate and in failing to adequately explain her findings. Claimant also argues that the administrative law judge erred in discrediting the opinions of Drs. Tyndall and Kraynak, particularly in light of their status as treating physicians. These contentions are without merit.

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The miner died on February 6, 2003. Director's Exhibit 7. Claimant filed her claim on February 26, 2003. Director's Exhibit 3.

<sup>2</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as the miner's last year of coal mine employment occurred in Pennsylvania. Director's Exhibits 1, 3; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

In her Decision and Order, the administrative law judge set forth her findings in detail, including the underlying rationale, as is required by the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a). Decision and Order at 5-7; see *Mazgaj v. Valley Camp Coal Corp.*, 9 BLR 1-201 (1986); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(*en banc*), *aff'd on recon.*, 9 BLR 1-104 (1986). In addition, the administrative law judge summarized the death certificate and noted that it was prepared by Dr. Tyndall. She then appropriately considered whether the conclusions set forth on the death certificate and reiterated by Dr. Tyndall in his written report were adequately documented and reasoned.<sup>3</sup> Decision and Order at 5; Director's Exhibit 7; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

The administrative law judge acted within her discretion as fact-finder in determining that Dr. Tyndall's opinion, that pneumoconiosis "most likely did hasten [the miner's] demise," was entitled to little weight as Dr. Tyndall did not identify the evidence in the treating records which supported his opinion. Decision and Order at 5; Claimant's Exhibit 1; see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). The administrative law judge also rationally found that Dr. Kraynak's opinion, that Dr. Tyndall correctly identified pneumoconiosis as a likely contributing cause of the miner's death, was insufficient to establish death due to pneumoconiosis on the ground that Dr. Kraynak did not adequately explain his conclusion nor did he set forth any supporting evidence. Decision and Order at 5-6; Claimant's Exhibit 3; *Justice*, 11 BLR at 1-93; *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). In light of the administrative law judge's permissible discrediting of their opinions, the administrative law judge did not err in declining to accord determinative weight to the medical reports of Drs. Tyndall and Kraynak based upon their status as treating physicians. *Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994). We affirm, therefore, the administrative law judge's determination that the medical evidence of record supportive of claimant's burden of proof is insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c). *Lukosevicz*, 888 F.2d 1001, 13 BLR 2-100.

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<sup>3</sup> Dr. Tyndall indicated on the death certificate that the miner's death was caused by cardiopulmonary arrest and an acute myocardial infarction. Director's Exhibit 7. He also identified pneumoconiosis and an acute hip fracture as contributing causes of death. *Id.*



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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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge