

BRB No. 00-0238 BLA

BARBARA JEAN SUMNER)
(Widow of)
RONNIE CHARLES SUMNER))

Claimant-Petitioner)

v.)

DOUBLE N CORPORATION)

DATE ISSUED: _____

Employer-Respondent)

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

Party-in-Interest)

DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Daniel J. Roketenetz,
Administrative Law Judge, United States Department of Labor.

John Hunt Morgan and Edmond Collett, Hyden, Kentucky, for claimant.

Gretchen Nunn Gullett (Boehl Stopher & Graves), Prestonburg, Kentucky, for
employer.

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

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order - Denial of Benefits

¹The miner's death certificate indicates that he died on February 22, 1996 due to disseminated toxoplasmosis, immunocompromised state, allogenic bone marrow transplant, acute leukemia. "Treatment of chronic graft versus host" is listed as a significant condition which contributed to death but did not result in the underlying causes of death. Director's Exhibit 9.

The claimant filed her application for survivor's benefits on September 5, 1996.

(98-BLA-1032) of Administrative Law Judge Daniel J. Roketenetz 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). The administrative law judge credited claimant with at least ten years of coal mine employment. Considering the merits of the claim under 20 C.F.R. Part 718, the administrative law judge found that claimant established the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(2). The administrative law judge further found that the medical evidence failed to establish that pneumoconiosis contributed to or hastened the miner's death under 20 C.F.R. §718.205(c) pursuant to *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's weighing of the medical opinion evidence in finding it insufficient to establish death due to pneumoconiosis at Section 718.205(c). Employer responds in support of the decision below. The Director, Office of Workers' Compensation Programs, has not filed a brief in the 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 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, claimant must establish that the miner's 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 Section 718.205(c), death will be considered to be due to pneumoconiosis if pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. The United States Court of Appeals for the Sixth Circuit, wherein jurisdiction of this case lies, held in *Brown, supra*, that pneumoconiosis will be found to be a substantially contributing cause or factor leading to the miner's death if it serves to hasten that death in any way, *Brown, supra*, 996 F.2d 812 at 817, 17 BLR 2-135 at 2-141; *see also Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).

Claimant contends that the reports of Drs. Goodman, Bielecki, Breeding, Lair and Westerman are well reasoned and "therefore they should not have been rejected by Judge Roketenetz for the reasons he provided." Claimant's Brief at 4.

The credibility of the medical evidence is a matter for the fact finder to determine. *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Further, it is claimant's burden to specify error in the decision below. *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-

46 (6th Cir. 1986). The Board is not empowered to reweigh the medical evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

In the instant case, the administrative law judge properly accorded less weight to the opinions of Drs. Bielecki, Breeding and Goodman based on his finding that the reports were unsupported by any objective evidence of record. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Specifically, the administrative law judge found that Drs. Bielecki and Breeding did not refer to any objective evidence in support of their opinion that the miner's pneumoconiosis "weakened" the miner's lungs and thereby hastened his death due to toxoplasmosis. The administrative law judge also noted that Dr. Goodman did not state upon which evidence she relied in finding that "it is quite clear from the data that Mr. Sumner did have pneumoconiosis and that it did contribute to his death, the degree of which it contributed would be arbitrarily placed by either party in this case." Claimant's Exhibit 1; *Id.*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). With regard to Dr. Lair, the administrative law judge noted that Dr. Lair reviewed the evidence and concluded that he could not "state unequivocally that [the Miner's] black lung played a role in his demise." Director's Exhibit 52; Decision and Order at 12. The administrative law judge could properly accord Dr. Lair's opinion less weight based on the physician's equivocation. *Griffith, supra citing Risher v. Director, OWCP*, 940 F.2d 327, 15 BLR 2-186 (8th Cir. 1991).

Claimant also contends that Dr. Westerman provided concise reasoning in support of his opinion that the miner's lungs were weakened due, *inter alia*, to pneumoconiosis and thus were susceptible to developing cancer, and that the administrative law judge's finding that Dr. Westerman's opinion was equivocal and speculative is contrary to the record. Claimant's contention lacks merit. The record reveals that Dr. Westerman indicated the following in a letter to claimant:

You may want to remember some of the following observations when looking for a source of your husband's leukemia...

4. The fact that your husband had other work related health problems, such as black lung or coal worker's [sic] pneumoconiosis, could have made him more susceptible to developing cancer. His immune system potentially was already compromised by black lung disease.

Claimant's Exhibit 1. The administrative law judge permissibly found that Dr. Westerman's opinion that pneumoconiosis could have made the miner more susceptible to developing cancer was "much too equivocal and speculative to be accorded any probative value." Decision and Order at 12. *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Claimant further contends that the administrative law judge committed reversible error in not acknowledging that Drs. Goodman, Bielecki, Breeding and Lair examined the miner while Drs. Hutchins, Kleinerman, Naeye, Caffrey, Cibull and Dennis did not. Claimant's contention lacks merit. The administrative law judge recognized that Drs. Lair, Bielecki, Breeding and Goodman had each treated the miner during his lifetime. Decision and Order at 7, 8, 11. Moreover, based on the foregoing discussion we hold that the administrative law judge provided valid reasons for according less weight to the opinions of these physicians. *See Griffith, supra*. Substantial evidence thus supports the administrative law judge's discrediting of the medical opinions relied upon by claimant at Section 718.205(c). *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 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).

We, therefore, affirm the administrative law judge's finding that claimant failed to meet her burden to establish that the miner's pneumoconiosis contributed to his death pursuant to *Brown* under Section 718.205(c), and we further affirm the administrative law judge's denial of benefits in this survivor's claim.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge