

BRB No. 01-0306 BLA

ELOISE RATLIFF)	
(Widow of BOBBY D. RATLIFF))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
KENTLAND ELKHORN COAL)	DATE ISSUED:	
COMPANY)	
)	
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.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Lois A. Kitts (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

Michelle S. Gerdano (Howard M. Radzely, Acting 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: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow,¹ appeals the Decision and Order - Denial of Benefits (99-BLA-1334) 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).² The administrative law judge credited

¹The miner's death certificate indicates that he died on September 16, 1998 due to cardio-respiratory failure due to multi-organ failure. Director's Exhibit 6. Claimant filed her application for survivor's benefits on October 16, 1998. Director's Exhibit 1.

²The 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 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

claimant with sixteen 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 based on the report of the autopsy prosector, Dr. Dennis, under 20 C.F.R. §718.202(a)(2) (2000). The administrative law judge further found that the medical evidence was insufficient to establish that pneumoconiosis contributed to or hastened the miner's death under 20 C.F.R. §718.205(c) (2000) pursuant to *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995) and *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 20 C.F.R. §718.205(c) (2000). 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

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). The Board subsequently issued an order requesting supplemental briefing in the instant case. 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 parties regarding the impact of the challenged regulations.

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 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).

Claimant contends that the administrative law judge’s finding, that the miner’s coal workers’ pneumoconiosis did not cause, contribute to or hasten the miner’s death, is contrary to the opinion of the miner’s treating physician and the “original pathologist” and thus is erroneous.³ Claimant further argues that the administrative law judge erred by according greater weight to the opinions of physicians who never examined the miner prior to the time of his death over the opinions of those physicians who examined the miner on a regular basis. Claimant also sets forth the medical evidence, and states:

It is very evident from reviewing the weight of medical evidence contained in the record the Claimant died in part or in whole from the disease of black lung. Not only has the Claimant’s family and treating physician stated this, but the original pathologist, Dr. Buddington and numerous pathologists also [stated] this and support Dr. [Dennis’s] and Dr. Coleman’s conclusion. The medical reports of Dr. Buddington and Dr. DeLara support the opinions of Dr. Coleman and Dr. [Dennis].

Contained in the record are numerous hospitalizations that indicate this

³We affirm the administrative law judge’s finding of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), a finding favorable to claimant, as it is unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

individual suffered from severe breathing problems. Claimant feels all the above [diagnoses] meet or equal the definition of pneumoconiosis and pursuant to *Brown v. Rock Creek Mining [Co.,]* 996 F.2d 812[, 17 BLR 2-135] (6th Cir. 1993); and *Griffith v. Director, OWCP*, 49 F.[3]d 184[, 19 BLR 2-111] (6th Cir. 1995) these conditions that the Claimant suffered from definitely did hasten... his death and [were] a substantially contributing cause of the Miner's death for purposes of [20 C.F.R. §]718.205.

Claimant's Brief at 6.

As an initial matter, 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). Claimant's mere recitation and interpretation of the medical evidence do not meet her burden to identify any alleged error in the decision below. *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). Further, the credibility of the medical evidence is a matter for the fact finder to determine. *See Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). 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 permissibly accorded less weight to the medical opinions of Drs. Coleman, Buddington and DeLara, who found that the miner's pneumoconiosis substantially contributed to, hastened, or was a factor in the miner's death, Director's Exhibit 18; Claimant's Exhibit 1. Specifically, the administrative law judge found that none of these physicians effectively linked the miner's pneumoconiosis to his death, discussed the miner's smoking history or adequately explained how they reached their conclusions. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *see also Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1983). The administrative law judge added,

Indeed, Dr. Coleman treated the Miner prior to his death, and never listed the disease as a factor in the Miner's condition. He signed the death certificate, which does not include the disease as a factor in the Miner's death. Drs. Mettu, Puram and Nichols, who treated the Miner during his lifetime, made no mention of the disease. Dr. Dennis, who performed the autopsy, did not list the disease as a factor in the Miner's death.

Decision and Order at 13. The administrative law judge's findings regarding the reports of Drs. Coleman and Dennis, upon which claimant relies, are supported by the record. Specifically, Dr. Coleman did not include pneumoconiosis as one of the conditions suffered by the miner during his hospitalization beginning September 10, 1998 which ended in his demise, Director's Exhibit 22, and did not include pneumoconiosis as a factor in the miner's

death when he completed the death certificate, Director's Exhibit 6. Rather, by letter dated February 5, 1999, Dr. Coleman stated, in totality:

Ms. Ratliff comes in today out of frustration. She has been turned down for Mr. Ratliff's black lung which he had signed up for because, they said he did not die because of it.

That was not the end cause of his death but certainly his black lung (Anthracosilicosis/black lung deposition) seen on the superficial surface of the lungs and his chronic emphysema were the primary leading causes to his end stage cardiorespiratory failure which was the ultimate cause of his death.

Director's Exhibit 18.

Further, because Dr. Dennis, the autopsy prosector, did not link the miner's pneumoconiosis to his death, his autopsy report does not support claimant's burden to establish death due to pneumoconiosis under 20 C.F.R. §718.205(c) and claimant's reliance on it is thus unavailing. Specifically, Dr. Dennis included a diagnosis of "Anthracosilicosis, mild to moderate" among his final anatomical diagnoses. *See* 20 C.F.R. §718.201(a)(1); Director's Exhibit 18. With regard to the cause of the miner's death, he concluded:

This patient died a pulmonary death with pulmonary congestion and edema, presumable aspiration of gastric contents with abscess formation and advanced to severe bronchopneumonia and tracheobronchitis. Pulmonary edema is moderate to severe.

No evidence of acute myocardial infarction is seen. The coronary vessels appear satisfactory.

Director's Exhibit 18. The record thus supports the administrative law judge's finding that Dr. Dennis did not list pneumoconiosis as a factor in the miner's death. Decision and Order at 13.

Based on the foregoing, we hold that the administrative law judge provided valid reasons for according less weight to the medical opinions of Drs. Coleman, DeLara and Buddington. *See Griffith, supra*. Substantial evidence thus supports the administrative law judge's discrediting of the medical opinions relied upon by claimant. 20 C.F.R. §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). Moreover, substantial evidence in the record supports the administrative law judge's determination that Dr. Dennis did not link the miner's pneumoconiosis to his death.

Director's Exhibit 18. 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 *Griffith* and *Brown* under 20 C.F.R. §718.205(c) (2000). *See* 20 C.F.R. §718.205(c)(2). We further affirm the administrative law judge's denial of benefits in the instant survivor's claim.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge