

BRB No. 03-0188 BLA

SUSAN J. BRADLEY)
(Widow of RICHARD P. BRADLEY))

Claimant-Petitioner)

v.)

GREENWICH COLLIERIES,)
INCORPORATED)

Employer-Respondent)

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

Party-in-Interest)

DATE ISSUED: 11/19/2003

DECISION and ORDER

Appeal of the Decision and Order on Remand - Denying Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose), Johnstown, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (2001-BLA-0116) of Administrative Law Judge Daniel L. Leland 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).¹ This case is on appeal before the Board

¹The Department of Labor has amended the regulations implementing the Federal

for a second time. In the last appeal, the Board vacated the administrative law judge's findings pursuant to 20 C.F.R. §§718.304(b) and 718.205(c), and remanded this case for the administrative law judge to reevaluate the conflicting medical opinions, provide valid reasons for his credibility determinations, and determine whether the weight of the evidence establishes the existence of "massive lesions" pursuant to Section 718.304(b), thereby entitling claimant to the irrebuttable presumption of death due to pneumoconiosis, *see* 30 U.S.C. §921(c)(3), 20 C.F.R. §§718.304(b), 718.205(c)(3), or whether the medical evidence establishes death due to pneumoconiosis under the other subsections of Section 718.205(c). *Bradley v. Greenwich Collieries*, BRB No. 02-0118 BLA (July 30, 2002)(unpub.).

On remand, the administrative law judge found the evidence insufficient either to invoke the irrebuttable presumption at Section 718.304 or to establish that the miner's death was due to pneumoconiosis at Section 718.205(c). Accordingly, benefits were denied. In the present appeal, claimant contends that the administrative law judge erred in his weighing of the medical opinion evidence relevant to the issues of complicated pneumoconiosis at Section 718.304(b) and the cause of the miner's death at Section 718.205(c). Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has declined to participate in this 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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, are to the amended regulations.

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence 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(a)(1)-(3); *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). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). 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); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).²

Claimant initially challenges the administrative law judge's weighing of the medical opinions at Section 718.304(b) and his ultimate reliance on employer's experts. Claimant argues that because the dimensions of the largest lesions observed on the miner's autopsy slides by Drs. Goldblatt, Perper and Rizkalla satisfy the stringent standards promulgated by the Archives of Pathology for diagnosing complicated pneumoconiosis, the administrative law judge erred in finding that the opinions of these physicians were insufficient to establish invocation of the presumption at Section 718.304(b). Claimant's arguments amount to a request to reweigh the evidence, which is beyond the Board's scope of review. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989). The administrative law judge accurately reviewed the conflicting medical opinions of record and determined that all of the physicians were highly qualified pathologists. Decision and Order on Remand at 3-5. Although Drs. Goldblatt, Perper and Rizkalla diagnosed complicated pneumoconiosis, the administrative law judge permissibly found that it was not clear that the lesions described by these physicians constituted "massive lesions" sufficient to invoke the irrebuttable presumption at Section 718.304, as they did not make an equivalency determination that any nodule of coal workers' pneumoconiosis they observed on the autopsy slides would show as an opacity greater than one centimeter when x-rayed. Decision and Order on Remand at 4;

²This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as the miner's coal mine employment occurred in the Commonwealth of Pennsylvania. Director's Exhibit 2; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

see Eastern Assoc. Coal Corp. v. Director, OWCP [Scarbro], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *see also Clites v. Jones & Laughlin Steel Corp.*, 663 F.2d 14, 3 BLR 2B86 (3d Cir. 1981). Additionally, the administrative law judge determined that Drs. Bush, Mendelow, Cagle, Tomashefski and Griffin opined that the miner had simple but not complicated pneumoconiosis because his pneumoconiotic nodules measured less than one centimeter in diameter, and the administrative law judge was persuaded by the explanation of employer's experts that the lesions diagnosed as complicated pneumoconiosis by Drs. Goldblatt, Perper and Rizkalla were really areas of scarring caused by past infection or inflammation. The administrative law judge then acted within his discretion as trier-of-fact in finding that the weight of the evidence was insufficient to establish invocation of the irrebuttable presumption at Section 718.304, as he found that the opinions of employer's experts were well-reasoned and consistent with the medical evidence documenting that the miner had suffered several episodes of pneumonia as well as severe emphysema. Decision and Order at 5; *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge's findings pursuant to Section 718.304 are supported by substantial evidence, and thus are affirmed.

We agree, however, with claimant's contention that the administrative law judge did not provide a valid reason for discrediting the medical opinions of Drs. Perper and Rizkalla at Section 718.205(c). In finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis, the administrative law judge credited, as well-reasoned and supported by the objective medical evidence, the opinions of Drs. Bush, Mendelow, Cagle, Griffin and Tomashefski, that the miner's death was unrelated to dust exposure in coal mine employment but was attributable to acute bronchopneumonia caused by severe centrilobular emphysema due entirely to smoking. Decision and Order on Remand at 6-7. The administrative law judge permissibly accorded little weight to the opinion of Dr. Goldblatt, that pneumoconiosis and severe pulmonary emphysema contributed to the miner's death, as he determined that the physician did not identify the etiology of these diseases or explain how they contributed to the miner's death, and Dr. Goldblatt did not have an accurate understanding of the miner's smoking history. *Id.*; *see Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-215 (3d Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Crosson v. Director, OWCP*, 6 BLR 1-809 (1984). The administrative law judge, however, mischaracterized the opinions of Drs. Perper and Rizkalla when he found them to be too equivocal regarding etiology to support a finding that coal dust exposure hastened the miner's death. The administrative law judge concluded that the opinions were equivocal because he noted that "Drs. Perper and Rizkalla stated that it could not be determined whether the miner's coal dust exposure or cigarette smoking caused his centrilobular emphysema, as both are known causes of emphysema." Decision and Order on Remand at 6. Contrary to the administrative law judge's findings, however, Drs. Perper and Rizkalla opined without qualification that pneumoconiosis and emphysema caused by both coal dust exposure and smoking hastened the miner's death. Director's Exhibit 13; Claimant's Exhibits 1, 3-5; *see generally Balsavage*

v. Director, OWCP, 295 F.3d 390, 22 BLR 2-386 (3d Cir. 2002). Consequently, we vacate the administrative law judge's findings pursuant to Section 718.205(c), and remand this case for the administrative law judge to reassess the opinions of Drs. Perper and Rizkalla, and to reweigh them against the contrary opinions of Drs. Bush, Mendelow, Cagle, Griffin and Tomashefski.

Accordingly, the administrative law judge's Decision and Order on Remand - Denying Benefits is affirmed in part and vacated in part, and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge