

BRB No. 03-0393 BLA

RUTH L. SCHOFFLER-GEIST (Widow of)
MARVIN L. SCHOFFLER))

Claimant-Petitioner)

v.)

DATE ISSUED: 11/25/2003

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

Respondent)

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan,
Administrative Law Judge, United States Department of Labor.

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

Sarah M. Hurley (Howard M. Radzely, Acting 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, SMITH and
HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow,¹

¹ Claimant is Ruth L. Schoffler-Geist, the surviving spouse of the deceased miner, Marvin L. Schoffler, who died on February 21, 2001. Decision and Order at 2; Director's Exhibit 3. Claimant filed this survivor's claim on February 28, 2001. Decision and Order at 2; Director's Exhibit 1. By correspondence to the administrative law judge dated November 27, 2002, claimant's counsel advised that claimant remarried on November 12, 2002, and that her new name is Ruth Geist.

appeals the Decision and Order (2002-BLA-05030) of Administrative Law Judge Thomas F. Phalen, Jr., 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).²

The administrative law judge credited the miner with ten years of coal mine employment, noted the concession of the Director, Office of Workers' Compensation Programs (the Director), that the miner had pneumoconiosis arising out of coal mine employment, *see* 20 C.F.R. §§718.202(a) and 718.203(b), and adjudicated the claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge considered the evidence of record and found that it was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in finding that the medical opinion evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The Director responds, urging affirmance of the decision below, arguing that the administrative law judge properly weighed the evidence and found that the miner's death was not due to pneumoconiosis. Claimant filed a reply wherein she reiterated her contentions.

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

To establish entitlement to survivor's benefits, 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. §§718.3, 718.202, 718.203, 718.205(a); *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 survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, 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 death

² 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).

if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Lukosevich v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

In challenging the administrative law judge's weighing of the evidence pursuant to Section 718.205(c)(2) and finding it insufficient to establish that pneumoconiosis was a substantially contributing cause of the miner's death, claimant contends that the administrative law judge erred in crediting Dr. Sherman's opinion while giving less weight to the opinions of Drs. Simelaro, Kraynak, Bross and Kucera as well as discounting the death certificate and ignoring claimant's hearing testimony. We disagree. Claimant's allegations of error are without merit and amount to a request to reweigh the evidence.

The administrative law judge reasonably relied upon Dr. Sherman's opinion after finding it to be well-reasoned and documented and supported by the miner's last hospitalization records, which showed a rapid deterioration in the miner's liver and renal function just prior to his death, but did not reflect treatment for pulmonary distress. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); Decision and Order at 6; Director's Exhibit 4. Moreover, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Sherman than Dr. Kraynak because of his superior credentials.³ *See Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Dr. Sherman, who reviewed the records of the miner's last hospitalization and noted that the miner had previously had a kidney transplant, opined that the miner's death was due to liver and kidney failure and was unrelated to pneumoconiosis, nor was pneumoconiosis a contributing factor in the miner's death. Decision and Order at 6; Director's Exhibits 7. Dr. Sherman stated that the blockage in the biliary tract resulted in sepsis and the resulting liver and kidney failure caused the miner's death. *Id.* The administrative law judge was rationally persuaded by Dr. Sherman's indication that the miner was not treated for his pneumoconiosis during his last hospitalization because the treatment records did not mention any increase in the miner's pulmonary symptoms nor any contribution from his pulmonary condition to his liver and kidney failure. *Id.* Thus, the administrative law judge's findings with respect to Dr. Sherman's opinion are supported by substantial evidence and are affirmed.

Claimant also argues that the administrative law judge mischaracterized Dr. Simelaro's opinion in finding that the physician did not address the cause of death in any meaningful way and erred in rejecting it as conclusory. This contention lacks merit. Contrary to claimant's contention, the administrative law judge explained that he

³ In his review of the medical reports, the administrative law judge noted that Dr. Sherman is Board-certified in Internal Medicine and Pulmonary Disease, Decision and Order at 4, whereas Dr. Kraynak is Board-eligible in Family Medicine. Decision and Order at 5.

discounted Dr. Simelaro's opinion on the basis that the opinion was not supported by the hospitalization records. Decision and Order at 5-7; Claimant's Exhibit 3. Dr. Simelaro reviewed the medical reports of record and concluded that while the miner suffered from liver, cardiac and renal failure, pneumoconiosis contributed to death by compromising the pulmonary system. *Id.* Dr. Simelaro opined that since the lung's were impaired, the miner could not compensate for the effects of his liver and kidney failure. *Id.* He also discussed the relationship between the metabolic acidosis from the renal failure and the respiratory alkalosis. *Id.* Dr. Simelaro indicated that the respiratory component caused a cardiac component and a renal component resulting in more stress on the lungs and, due to his pneumoconiosis, the miner's pulmonary system could not compensate. *Id.* While Dr. Simelaro discussed the severity of the miner's pulmonary impairment during his lifetime, the administrative law judge acted within his discretion in determining that the physician did not adequately explain his determination that pneumoconiosis hastened the miner's death from liver failure since Dr. Simelaro did not actually describe the mechanism by which pneumoconiosis interacted with the miner's liver and kidney disease to hasten his death nor did he identify specific medical data which supported his conclusion. Thus, the administrative law judge rationally concluded that Dr. Simelaro provided insufficient reasoning regarding the cause of the miner's death. *See Clark*, 12 BLR 1-149; *Tackett*, 12 BLR 1-11; Decision and Order at 7. We affirm, therefore, the administrative law judge's findings with respect to Dr. Simelaro's opinion.

Claimant further argues that the administrative law judge erred in failing to credit Dr. Kraynak's opinion as reasoned and documented. We disagree with claimant's assertion of error as claimant's contention amounts to a request to reweigh the evidence. The administrative law judge properly discounted Dr. Kraynak's opinion on the ground that the doctor failed to adequately explain his conclusions in light of the absence of supporting documentation.⁴ *See Clark*, 12 BLR 1-149; *Tackett*, 12 BLR 1-11; Decision and Order at 7; Director's Exhibit 5; Claimant's Exhibit 5. Dr. Kraynak reviewed medical records in this case. Director's Exhibit 5; Claimant's Exhibit 5. Dr. Kraynak opined that the miner's pneumoconiosis was a contributing factor in his death as it caused greater stress on the other body systems, enabling other disease entities to take hold and

⁴In support of her contention that the administrative law judge improperly discounted the opinions of the treating physicians, claimant relies on the decision of the United States Court of Appeals for the Third Circuit in *Balsavage v. Director, OWCP*, 295 F.3d 390, 22 BLR 2-386 (3d Cir. 2002), where the court reversed a denial of benefits after holding that the administrative law judge improperly discredited claimant's doctors' opinions by focusing on "peripheral quibbles." *Balsavage*, 295 F.3d 390 at 397, 22 BLR 2-386 at 2-396. In *Balsavage*, the court held that the administrative law judge "simply failed to address [the opinions]." *Id.* The administrative law judge in *Balsavage* had not, as the administrative law judge did in the instant case, fully considered whether the opinions were documented and reasoned. Thus, contrary to claimant's suggestion, the administrative law judge's rejection of Dr. Kraynak's opinion was not in violation of the court's decision in *Balsavage*.

lead to the miner's death. *Id.* He stated that the miner would have been in a better position to fight off the stress from these disease entities if it were not for his pneumoconiosis. *Id.* Dr. Kraynak concluded that the miner's inability to oxygenate his blood compromised his cardiovascular system. *Id.* The administrative law judge acted within his discretion in determining that Dr. Kraynak's explanation of how pneumoconiosis hastened the miner's death did not actually describe the mechanism by which pneumoconiosis interacted with the miner's liver and kidney disease to hasten his death nor did he identify specific medical data which supported his conclusions. Decision and Order at 7-8; *see Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *see also Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). We therefore affirm the administrative law judge's findings with respect to Dr. Kraynak's opinion.

Furthermore, we reject claimant's contention that the administrative law judge erred in finding that the opinions of Drs. Bross and Kucera, regarding a possible link between the miner's pneumoconiosis and his death, were equivocal, and, thus, entitled to diminished weight. Decision and Order 7. Dr. Bross opined that he could not be certain the miner's jaundice was related to pneumoconiosis, although he suspected it affected the miner's pulmonary reserve. Decision and Order at 8; Claimant's Exhibit 1. Further, Dr. Kucera only opined that pneumoconiosis "could have hastened the miner's death." Director's Exhibit 6; Decision and Order at 8. Thus, the administrative law judge properly discredited the opinions of Drs. Bross and Kucera upon finding that they were equivocal. *Justice*, 11 BLR 1-91; *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145 (1984); *Stanley v. Eastern Associated Coal Corp.*, 6 BLR 1-1157 (1984).

We, therefore, affirm the administrative law judge's finding that the evidence was insufficient to establish that the miner's death was hastened by pneumoconiosis pursuant to Section 718.205(c)(2). *See* 20 C.F.R. §718.205(c)(2), (c)(5); *Lukosevich*, 888 F.2d 1001, 13 BLR 2-100.

Claimant has the general burden of establishing entitlement and bears the risk of non-persuasion if her evidence is found insufficient to establish a crucial element of entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *White v. Director, OWCP*, 6 BLR 1-368 (1983). Furthermore, the administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987).

In this case, the administrative law judge permissibly found that the evidence was insufficient to establish death due to pneumoconiosis because he found that there were no credible medical opinions attributing the miner's death to pneumoconiosis.⁵ *Clark*, 12 BLR 1-149. Consequently, because claimant has not met her burden of proof on an essential element of entitlement under 20 C.F.R. Part 718 in this survivor's claim, an award of benefits is precluded. 20 C.F.R. §718.205(c); *see Lukosevich*, 888 F.2d 1001, 13 BLR 2-100, 17 BLR 2-135; *Clark*, 12 BLR 1-149; *Trent*, 11 BLR 1-26; *Trumbo*, 17 BLR 1-85; *Neeley*, 11 BLR 1-85.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

⁵Because the administrative law judge rationally determined that the medical evidence of record did not support a determination that pneumoconiosis was a contributing cause of the miner's death, claimant's testimony could not satisfy her burden of establishing that pneumoconiosis caused or contributed to the miner's death. 20 C.F.R. §718.205(c); *see also Lukosevich v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).