

BRB No. 99-0276 BLA

ALICE B. NOVAK )  
(Widow of ADAM A. NOVAK) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 SHANNOPIN MINING COMPANY ) 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 - Denying Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Susan Foster Blank, Eighty Four, Pennsylvania, for claimant.

Hilary S. Daninhirsch (Thompson, Calkins, & Sutter), Pittsburgh, Pennsylvania, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order - Denying Benefits (98-BLA-0273)

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<sup>1</sup> Claimant, Alice B. Novak, is the widow of Adam A. Novak, the miner, who died on September 3, 1996. Director's Exhibit 4. The miner filed his application for benefits on June 25, 1985 and was awarded benefits in a Decision and Order by Administrative Law Judge Michael F. Colligan on May 24, 1989; this decision was affirmed on appeal by the Board. *Novak v. Shannopin Mining Co.*, BRB No. 89-2056 BLA (Oct. 31, 1990) (unpub.); Director's Exhibit 32. Employer did not appeal the Board's decision. After the miner's death, claimant filed her application for benefits

of Administrative Law Judge Michael P. Lesniak 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). Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge credited the parties' stipulation that the miner worked in qualifying coal mine employment for forty-three years. Next, the administrative law judge found that claimant failed to establish either that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or that his death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in not finding that the doctrine of collateral estoppel applied to preclude relitigation of the issue of pneumoconiosis in this case where the existence of pneumoconiosis was established, the miner was found to be totally disabled due to pneumoconiosis, and was awarded benefits in the prior adjudication of the living miner's claim. Claimant further contends that the administrative law judge erroneously found that the miner's pneumoconiosis did not contribute to or hasten his death pursuant to 20 C.F.R. §718.205(c). Employer responds, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs, as party-in-interest, has filed a letter indicating that he will not 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 the 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).

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on September 23, 1996. Director's Exhibit 1.

In challenging the administrative law judge's findings under Section 718.205(c), claimant argues the administrative law judge improperly accorded less weight to the opinion of Dr. O'Keefe in light of the fact that he had treated the miner until his death and his opinion was well reasoned and adequately explained. The administrative law judge properly found that pneumoconiosis was not listed on the death certificate, there was no autopsy evidence of record, and that the medical opinion evidence demonstrated that the miner's death was due to atrial fibrillation and sudden cardiac arrest. See *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); Decision and Order at 9; Director's Exhibits 4, 25, 26, 29; Employer's Exhibits 1, 7, 9, 10. The administrative law judge found that both Drs. Fino and Sinnenberg stated that the miner's coal mine employment had no connection to his death. Decision and Order at 9; Employer's Exhibits 7, 10. Furthermore, the administrative law judge, within a proper exercise of his discretion, discounted Dr. O'Keefe's opinion, in light of the other medical evidence, because it was neither well reasoned, see *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985) nor well documented, see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); Decision and Order at 9; Director's Exhibits 25, 29; Employer's Exhibits 7, 9, 10.<sup>2</sup>

Contrary to claimant's argument, the United States Court of Appeals for the Third Circuit, within whose appellate jurisdiction this case arises, has held that although "the treating physician's opinion merits consideration... there is some question about the extent of reliance to be given a treating physician's opinion when there is conflicting evidence." *Lango v. Director, OWCP*, 104 F.3d 573, 577, 21 BLR 2-12, 2-20 (3d Cir. 1997). Inasmuch as there is no requirement that treating or examining physicians' opinions must be given greater weight than opinions of other expert physicians, we reject claimant's contention that Dr. O'Keefe's status as treating physician entitles his opinion to dispositive weight. See *Lango, supra*; see also *Grigg v. Director, OWCP*, 28 F.3d 416, 420, 18 BLR 2-299, 2-307 (4th Cir.

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<sup>2</sup> Dr. O'Keefe, the miner's treating cardiologist, opined that the miner's coal workers' pneumoconiosis placed "an undue stress on the right side of his heart, which [was] clearly a contributing factor for atrial fibrillation," and therefore, contributed "in large part to his death." Director's Exhibits 25, 29; Employer's Exhibit 9. Dr. Fino, a Board-certified internist with a sub-specialty in pulmonary disease, opined that there was no connection between coal mine dust inhalation and the cause of the miner's death. Employer's Exhibit 10. Dr. Sinnenberg, who is Board-certified in anatomic and clinical pathology, concluded that the miner died as a result of atherosclerotic coronary artery disease and/or atherosclerotic cerebrovascular disease, neither of which were caused by coal dust exposure. Employer's Exhibit 7.

1994). Inasmuch as the administrative law judge permissibly determined that the preponderance of the evidence failed to establish that the miner's death was caused, contributed to, or hastened by pneumoconiosis, we affirm the administrative law judge's Section 718.205(c) determination as rational and supported by substantial evidence. See *Lukosevicz, supra*.<sup>3</sup>

Accordingly, the Decision and Order - Denying benefits of the administrative law judge is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge

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<sup>3</sup> Claimant's failure to establish that the miner's death was due to pneumoconiosis under Section 718.205(c) obviates the need to address her arguments regarding the effect of the doctrine of collateral estoppel and the existence of pneumoconiosis. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).