

BRB No. 99-1073 BLA

MILDRED FORD )  
(Widow of CHARLES FORD) )  
 )  
Claimant-Petitioner ) )  
 )  
v. )  
 )  
PEABODY COAL COMPANY ) DATE ISSUED:  
 )  
and )  
 )  
OLD REPUBLIC INSURANCE )  
COMPANY )  
 )  
Employer/Carrier- )  
Respondents ) )  
 )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Joseph Kelley (Monhollon & Kelley, P.S.C.), Madisonville, Kentucky, for claimant.

Amy E. Wilmot (Arter & Hadden LLP), Washington, D.C., for employer/carrier.

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 (98-BLA-0297) of Administrative Law Judge Donald W. Mosser 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). The instant case involves a survivor's claim filed on May 15, 1997.<sup>2</sup> The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant also argues that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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, a claimant must establish the existence of pneumoconiosis and 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

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<sup>1</sup>Claimant is the surviving spouse of the deceased miner who died on November 22, 1992. Director's Exhibit 8.

<sup>2</sup>The miner filed a claim for benefits on October 3, 1980. Director's Exhibit 30. In a Decision and Order dated July 3, 1985, Administrative Law Judge Michael P. Lesniak denied benefits. *Id.* There is no indication that the miner took any further action in regard to his 1980 claim.

(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. See 20 C.F.R. §718.205(c)(2). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction the instant case arises, has held that pneumoconiosis will be considered a substantially contributing cause of the miner's death if it actually hastened the miner's death. *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718. The administrative law judge properly found that Dr. Givens' finding that claimant's death was hastened by his pneumoconiosis was outweighed by the contrary opinions of Drs. Branscomb and Fino based upon their superior qualifications.<sup>3</sup> See

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<sup>3</sup>Drs. Branscomb is Board-certified in Internal Medicine. Employer's Exhibit 1. Dr. Fino is Board-certified in Internal Medicine and Pulmonary Disease. Employer's Exhibit 2. The record does not reflect that Dr. Givens is Board-certified in any medical specialty.

Claimant contends that Dr. Givens' opinion is entitled to greater weight based upon his status as the miner's treating physician. We disagree. The United States Court of Appeals for the Sixth Circuit has held that the opinions of treating physicians are entitled to greater weight than those of non-treating physicians. See *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). However, because the administrative law judge provided a proper reason for crediting the opinions of Drs. Branscomb and Fino over that of Dr. Givens, the administrative law judge was not required to mechanically give greater weight to Dr. Givens' opinion. See generally *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).

We also reject claimant's contention that the administrative law judge erred in failing to address the opinions of Drs. Cox, Pope and Hast. Because none of these physicians addressed the cause of the miner's death, the administrative law judge did not err in not addressing their opinions pursuant to 20 C.F.R. §718.205(c). See Director's Exhibits 9, 11.

176 F.3d 382, 21 BLR 2-615 (6th Cir. 1999)(An administrative law judge may accord greater weight to a physician with superior qualifications); see also *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Decision and Order at 14; Director's Exhibits 8, 13; Claimant's Exhibit 1; Employer's Exhibits 1-3. Consequently, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).<sup>4</sup>

In light of our affirmance of the administrative law judge's finding that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), we need not address the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1)-(4). See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order denying benefits 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>4</sup>Because there is no evidence of complicated pneumoconiosis in the record, claimant is precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. See 20 C.F.R. §718.205(c)(3).