

BRB No. 01-0119 BLA

KAREN L. LESTER)		
(Widow of WILLIAM D. LESTER))		
)		
Claimant-Petitioner)		
)		
v.)		
)		
BANNER COAL AND LAND COMPANY,)	DATE	ISSUED:
)		
INCORPORATED)		
)		
and)		
)		
WEST VIRGINIA COAL WORKERS')		
PNEUMOCONIOSIS FUND)		
)		
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 - Denying Benefits of Robert J. Lesnick, Administrative Law Judge, United States Department of Labor.

Karen L. Lester, Jaeger, West Virginia, *pro se*.

W. F. Richmond, Jr., Beckley, West Virginia, for employer.

Robert Weinberger (West Virginia Coal Workers' Pneumoconiosis Fund), Charleston, West Virginia, for carrier.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order -

Denying Benefits (00-BLA-0169) of Administrative Law Judge Robert J. Lesnick 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 Adjudicating this claim pursuant to 20 C.F.R. Part 718 (2000), the administrative law judge credited the miner with thirty-three years of qualifying coal mine employment. Next, the administrative law judge found that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2000), but failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(2000). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer and carrier respond, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs, as party-in-interest, has filed a letter indicating that he is not participating in this appeal.³

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *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 to be 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 the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

Relevant to Section 718.205(c), the record contains the opinions of four physicians. On June 3, 1998, Dr. Diwan completed the death certificate and listed myocardial infarction, arteriosclerosis, and hypertension as the causes of death. Director's Exhibit 7. Dr. Racadag,

the autopsy prosector, diagnosed *inter alia*, the existence of mild simple coal workers' pneumoconiosis and opined that pneumoconiosis "probably contributed to the [miner's] morbidity." Director's Exhibit 8. Dr. Fino similarly diagnosed simple coal workers' pneumoconiosis, but opined that coal mine dust inhalation played no role in the miner's death. Director's Exhibit 18; Employer's Exhibit 2; Carrier's Exhibit 1. In a report dated June 14, 1999, Dr. Hansbarger's review of the autopsy revealed that the miner's mild coal workers' pneumoconiosis did not contribute to his demise either on a primary or secondary basis. Director's Exhibit 17; Carrier's Exhibit 2. In a "corrected letter" dated August 19, 1999, Dr. Hansbarger opined that the autopsy findings of anthracotic pigmentation were insufficient to warrant a diagnosis of coal workers' pneumoconiosis, and therefore, since the miner did not suffer from coal workers' pneumoconiosis, the disease did not contribute to his death. Director's Exhibit 19; Employer's Exhibit 1.

We affirm the administrative law judge's determination that claimant failed to establish that pneumoconiosis substantially contributed to or hastened the miner's death inasmuch as this determination is rational, contains no reversible error, and is supported by substantial evidence. The administrative law judge, within a proper exercise of his discretion, found that the opinion of Dr. Racadag, the only physician of record to opine that pneumoconiosis contributed to the miner's death, was equivocal because Dr. Racadag provided no rationale for his conclusion that pneumoconiosis "probably contributed" to the miner's demise, and because he also concluded that death was caused by four other conditions that were diagnosed.⁴ *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, BLR (4th Cir. 2000)(bald conclusion that pneumoconiosis contributed to miner's death without some reasoning is insufficient to establish that pneumoconiosis hastened death); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); Decision and Order at 6. The administrative law judge found further that Dr. Racadag's opinion was contradicted by the conclusions of Drs. Hansbarger and Fino, who opined that pneumoconiosis neither contributed to nor hastened the miner's death. *See Sparks, supra*; Decision and Order at 6. Therefore, the administrative law judge properly found that Dr. Racadag's opinion was insufficient, standing alone, to establish that pneumoconiosis hastened the miner's death. *See Shuff, supra*; Decision and Order at 6.

Further, the administrative law judge reasonably found that Dr. Fino's opinion was thorough and well reasoned. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Lucostic v. U. S. Steel Corp.*, 8 BLR 1-46 (1985). Likewise, the administrative law judge permissibly found that Dr. Hansbarger's opinion,⁵ that the miner's pneumoconiosis was insufficient to have contributed to the miner's death, was well supported by his own pathological findings as well as by Dr. Racadag's opinion, that only mild, simple coal workers' pneumoconiosis was present. *See Trumbo, supra*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984), citing *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983);

Decision and Order at 6.

Accordingly, the administrative law judge properly found that claimant failed to satisfy her burden of affirmatively establishing that pneumoconiosis hastened the miner's death. *See Shuff, supra; Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley, supra*. Hence, we affirm the administrative law judge's Section 718.205(c) (2000) finding. *See* 20 C.F.R. §718.205(c)(5); *Shuff, supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge