

BRB No. 99-0747 BLA

MARGARET MATTO)	
(Widow of WILLIAM MATTO))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
)	
UNITED STATES STEEL MINING)	DATE ISSUED:
COMPANY)	
)	
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 of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Daniel J. Iler (Richman & Smith, Attorneys at Law LLP), Washington, Pennsylvania, for claimant.

D. Scott Newman (Burns, White & Hickton), Pittsburgh, Pennsylvania, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-536 and 98-BLA-537) of Administrative Law Judge Michael P. Lesniak 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). Based on the February 6, 1997 filing date, the administrative law judge applied the regulations at 20 C.F.R. Part 718. The administrative law judge found that the deceased miner worked for forty years in the coal mines and that claimant was his only dependent. The administrative law judge found the

existence of pneumoconiosis arising out of coal mine employment established as employer conceded these issues at the hearing. *See* 20 C.F.R. §§718.202(a), 718.203(b). The administrative law judge, however, found the evidence of record insufficient to meet claimant's burden of proving that pneumoconiosis caused, contributed to, or hastened the miner's death at 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant challenges the findings of the administrative law judge on the issue of death due to pneumoconiosis. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not respond in this appeal.¹

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 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, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that death was caused by complications of pneumoconiosis.² *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir.

¹ We affirm the findings of the administrative law judge on the length of coal mine employment, on the designation of employer as the responsible operator, on dependency, and on the concessions at 20 C.F.R. §§718.202(a) and 718.203(b), as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² Since the miner's last coal mine employment took place in Pennsylvania, the Board will apply the law of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

1989); *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). The United States Court of Appeals for the Third Circuit has held that any condition that hastens the miner's death is a substantially contributing cause of death for purposes of Section 718.205(c)(2). *See Lukosevicz, supra.*

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The evidence of record relevant to the cause of the miner's death includes the medical opinions of Dr. Pepper, the miner's treating physician while in a personal care home, Dr. Deliere, a pulmonologist who treated the miner from 1992 until March 1995, and Drs. Fino and Bennet, pulmonologists who reviewed the medical reports on behalf of employer.³ *See* Director's Exhibits 9, 17, 33, 38; Employer's Exhibits 1, 2.

³ The administrative law judge correctly noted that Drs. Deliere, Fino and Bennet were Board-certified in internal medicine and pulmonary diseases. *See* Employer's Exhibits 1, 2; Claimant's Exhibit 1.

At Section 718.205(c), claimant must prove, through competent medical evidence, that pneumoconiosis caused, contributed to or hastened the miner's death. *See Lukosevicz, supra; Trumbo, supra; Neeley, supra.* In the instant case, the administrative law judge found that the medical opinion of Dr. Deliere, the only report of record which supports claimant's burden of proof, was not well-reasoned and documented. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8 (1996); *Carson v. Westmoreland Coal Co.*, 19 BLR 1-18 (1994); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). In so doing, the administrative law judge permissibly determined that the Dr. Deliere's failure to discuss the miner's pulmonary condition between March 1995, the time when the physician last examined the miner, and January 27, 1997, the date of the miner's death, undermined the credibility of his report. *Id.*; *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985). Likewise, the administrative law judge did not misconstrue the medical opinion of Dr. Deliere; rather, the administrative law judge acted within his discretion in finding the physician's rationale for how pneumoconiosis contributed to the miner's death from an acute myocardial infarction generalized, not focused on the miner and confusing after noting that the physician discussed three types of disorders as possible contributors to the miner's death without clearly explaining whether all of the cardiac disorders would enhance the tendency towards respiratory failure, or whether, if only the third disorder enhanced the respiratory failure, how the other two disorders were ruled out. *See Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5 (1985). In addition, since the administrative law judge correctly concluded that Dr. Deliere had not treated the miner for almost two years prior to his death in 1997, he did not err when he declined to accord greater weight to Dr. Deliere's report as a treating and examining physician as the administrative law judge correctly noted that the physician acknowledged that the miner's condition could have changed substantially after the miner's last visit in March 1995. *See Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994). Thus, we affirm the administrative law judge's credibility determinations regarding the medical opinion of Dr. Deliere as supported by substantial evidence.⁴ *See generally Oggero v. Director, OWCP*, 7 BLR 1-860 (1985). 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 Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, the

⁴ As the medical opinion of Dr. Deliere was the only medical opinion of record which could, if credited, support claimant's burden of proof and the administrative law judge properly found it unreasoned, he was not required to make specific credibility findings concerning the medical reports of Drs. Fino, Pepper and Bennet because the opinions of these physicians would not support claimant's burden of proof. *See* 20 C.F.R. §718.205(c); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); *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).

administrative law judge's finding that death due to pneumoconiosis was not established at Section 718.205(c) is affirmed.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge