

BRB No. 02-0523 BLA

EVA E. MYERS)	
(Widow of BERTON H. MYERS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

John A. Singleton, Charleston, West Virginia, for claimant.

Timothy S. Williams (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 GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant, the widow of the miner, appeals the Decision and Order - Denying Benefits (01-BLA-513) of Administrative Law Judge Michael P. Lesniak on a 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).¹ The administrative law judge found at least ten years of coal mine employment established and, based on the date of filing, adjudicated the

¹ 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). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

claim pursuant to 20 C.F.R. Part 718. The administrative law judge further found that while the parties stipulated to the existence of pneumoconiosis arising out of coal mine employment,² the evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(1)-(5). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence was insufficient to establish that pneumoconiosis hastened the miner's death. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

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 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); *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)-(4). 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.*, 969 F.2d 911-80, 16 BLR 2-90, 2-92-93 (4th Cir. 1992), cert denied, 506 U.S. 1050 (1993).

² The miner was receiving benefits on a claim filed September 29, 1988. The miner died on April 12, 1999. On, or about, April 16, 1999, claimant, the miner's widow, filed her survivor's claim. See Director's Exhibits 38-1, 13, 1.

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. Contrary to claimant's contention, the administrative law judge is not required to accord greater weight to the opinion of a treating physician, solely because he is the treating physician, when the administrative law judge finds the treating physician's opinion to be unreasoned. See *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994). In considering the medical opinions in this case, the administrative law judge, while acknowledging that Dr. Dodenhoff was the miner's treating physician, accorded Dr. Dodenhoff's opinion little weight because Dr. Dodenhoff merely listed lung cancer due to black lung disease on the death certificate without any explanation. Director's Exhibit 13. In addition, the administrative law judge noted that Dr. Dodenhoff failed to cite to any medical literature or other evidence supporting his conclusion that the miner developed cancer of the left lung as a result of his pneumoconiosis or that pneumoconiosis had aggravated his pulmonary condition by making the miner's lungs less compliant and speeding the respiratory failure which led to the miner's death. Further, in assessing the credibility of Dr. Dodenhoff's opinion, the administrative law judge noted that Dr. Dodenhoff misstated which lung the miner had his second lung cancer in and misstated the date of the miner's death. The administrative law judge also accorded less weight to Dr. Dodenhoff's opinion because Dr. Dodenhoff did not refer to any clinical test results and did not discuss the miner's long history of heavy cigarette smoking. Likewise, the administrative law judge accorded little weight to the cursory letter of Dr. Jain, the miner's treating oncologist, as he too failed to provide a basis for his opinion or discuss the miner's extensive smoking history. Claimant's Exhibit 2.³ Instead, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Spagnolo which he found, when compared to the other medical opinions, to be relatively well-reasoned and documented. The administrative law judge also accorded greater weight to Dr. Spagnolo's opinion based on his superior qualifications and in light of his research protocols and publications involving lung cancer. Director's Exhibit 35. This was rational. See *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); see also *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). We therefore affirm the administrative law judge's finding that the evidence was insufficient to

³ The administrative law judge also accorded little weight to the opinions of Drs. Ranavaya and Gaziano because they were not well-documented and reasoned. Inasmuch as their opinions, however, support the administrative law judge's denial of benefits we need not address the administrative law judge's findings concerning their opinions in this case. See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

establish that pneumoconiosis caused, contributed to, or hastened the miner's death pursuant to Section 718.205(c)(1)-(5), and affirm the denial of benefits in this survivor's claim. *Shuff, supra; Neeley, supra.*

Accordingly, the administrative law judge's Decision and Order denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge