

BRB No. 99-1061 BLA

RUTH WILLIAMS ELDRIDGE)
(Widow of CHESTER ELDRIDGE))
)
 Claimant-Respondent)
)
 v.)
)
LEWIS COAL COMPANY)
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 and)
)
OLD REPUBLIC INSURANCE COMPANY) DATE ISSUED:
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 Employer/Carrier-)
 Petitioners)
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)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
 Party-In-Interest) DECISION and ORDER

Appeal of the Decision and Order on Remand of Paul H. Teitler,
Administrative Law Judge, United States Department of Labor.

Jane Winkler Dyche, London, Kentucky, for claimant.

Richard A. Dean (Arter & Hadden LLP), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand (1997-BLA-0564) of
Administrative Law Judge Paul H. Teitler awarding benefits 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). This case is before the Board for the

second time. In the initial Decision and Order, the administrative law judge found that the miner had seventeen years of qualifying coal mine employment and that claimant¹ established that the miner was total disabled due to pneumoconiosis and that his death was due at least in part to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1), 718.203(b) and 718.204(b), (c)(4). Accordingly, benefits were awarded. On appeal, the Board affirmed the administrative law judge's finding regarding the length of the miner's coal mine employment and that the miner had pneumoconiosis which arose from his coal mine employment pursuant to Sections 718.202(a)(1) and 718.203(b), but vacated the award of benefits and remanded the claim for the administrative law judge to consider whether the evidence is sufficient to establish entitlement under 20 C.F.R. §718.205(c). *Eldridge v. Lewis Coal Company*, BRB No. 98-0235 BLA (Nov. 16, 1998)(unpub.).

In the instant Decision and Order, the administrative law judge found that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Accordingly, benefits were awarded. On appeal, employer contends that the administrative law judge erred in finding that claimant established that the miner's death was due to pneumoconiosis pursuant to Section 718.205. Claimant responds urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate on 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 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹The miner, Chester Eldridge, filed a claim for benefits on March 31, 1983 and was awarded benefits by Administrative Law Judge Richard E. Huddleston on August 20, 1987. Director's Exhibit 30. The miner died on July 7, 1996 and claimant, Ruth Williams Eldridge, the miner's widow, filed the instant survivor's claim for benefits on July 31, 1996. Director's Exhibits 1.

In a survivor's claim filed after January 1, 1982, the evidence must establish that the decedent miner's death was due to pneumoconiosis, and not due to a medical condition unrelated to pneumoconiosis. See *Willis v. Birchfield Mining Co.*, 15 BLR 1-59 (1991); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Under Section 718.205(c), death is considered to be due to pneumoconiosis where the cause of death was significantly related to or significantly aggravated by pneumoconiosis. *Foreman v. Peabody Coal Co.*, 8 BLR 1-371 (1985). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this claim arises, has construed "substantial contributing cause" under Section 718.205(c)(2) as encompassing situations in which pneumoconiosis actually hastened the miner's death. *Brown v. Rock Creek Mining Co., Inc.*, 996 F. 2d 812, 17 BLR 2-135 (6th Cir. 1993).

Employer contends that the administrative law judge erred in finding that the miner's death certificate, as supported by the hospital treatment records submitted by the miner's treating physicians, is sufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Employer's Brief at 5-11. The only evidence of record which addresses the cause of the miner's death is the death certificate which was certified by Dr. Dineen. Director's Exhibit 4. The death certificate lists the cause of death as pneumonia and lists coal workers' pneumoconiosis and chronic obstructive airways disease as other significant conditions contributing to the miner's death but not resulting in the underlying cause. *Id.* The record also contains reports of the miner's numerous hospital stays, the most recent of which was submitted by Dr. Dineen following the miner's admittance to the hospital on June 26, 1996. Director's Exhibit 8. Dr. Dineen opined that the miner had severe obstructive airway disease with acute bronchitis, leukocytosis, cushing's disease secondary to exogenous steroid use, history of coal workers' pneumoconiosis and generally was in a very debilitated state. *Id.* Dr. Dineen makes no comments concerning the degree of severity of the miner's coal workers' pneumoconiosis. *Id.*

The administrative law judge noted that Dr. Dineen listed coal workers' pneumoconiosis as a factor in the miner's death and stated that this finding was supported by "every hospitalization report from 1995 and 1996" and "by the fact that Dr. Dineen was the miner's treating physician during his final hospitalization...." Decision and Order on Remand at 4. The administrative law judge then found that "the record herein provides solid evidence that Dr. Dineen possessed personal knowledge of the miner from which to assess the cause of death." *Id.* The administrative law judge thus concluded that claimant established that the miner died due to pneumoconiosis pursuant to Section 718.205(c). While the record supports the administrative law judge's finding that Dr. Dineen treated the miner

during his final hospitalization, the administrative law judge has not provided the necessary analysis to affirm his finding that Dr. Dineen's notation on the death certificate, that the miner's pneumoconiosis contributed to his death is sufficient to satisfy the Sixth Circuit's holding that the miner's pneumoconiosis hastened his death. See generally *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186 (4th Cir. 2000); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). Inasmuch as Dr. Dineen provided no discussion of any objective data relevant to the cause of the miner's death and because he offers no explanation for why he believed that the miner's pneumoconiosis contributed to his death, it is not apparent why the administrative law judge determined that the death certificate is a reasoned opinion on the issue of the cause of the miner's death. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Consequently, we vacate the administrative law judge's finding that claimant established that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) and remand the case for the administrative law judge to reconsider the evidence relevant to the cause of the miner's death and to provide adequate rationale for his weighing of this evidence.

Accordingly, the administrative law judge's Decision and Order awarding benefits is vacated and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge