BRB No. 01-0248 BLA

VERA I. STILES (Widow of HUSTON H. STILES) Claimant-Respondent v. DRUMMOND COMPANY, INCORPORATED Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Michael E. Bevers (Nakamura, Quinn & Walls, LLP), Birmingham, Alabama, for claimant.

Laura A. Woodruff (Maynard, Cooper & Gale, P.C.), Birmingham, Alabama, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (00-BLA-0012) of Administrative Law Judge Mollie W. Neal on a survivor's claim[1] filed pursuant to the

[1] Claimant, Vera I. Stiles, is the widow of Huston H. Stiles, the miner, who died on May 16, 1998. Director's Exhibits 6, 39. The miner filed his first claim with the Social Security Administration on June 25, 1973, which was finally denied by Administrative Law Judge Parlen L. McKenna on June 30, 1986. Director's Exhibit 56. The miner took no

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

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further action on this claim, and subsequently, filed a duplicate claim with the Department of Labor on September 2, 1989. Director's Exhibit 56. Administrative Law Judge A. A. Simpson, Jr. denied the miner's duplicate claim on September 27, 1991 and, subsequently, the Board affirmed this decision. *Stiles v. Drummond Co., Inc.*, BRB No. 92-0218 BLA (Apr. 29, 1993) (unpub.); Director's Exhibit 56. The widow filed her claim on June 15, 1998. Director's Exhibit 1.

[2] 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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted,

(2000), the administrative law judge credited the parties' stipulation that the miner worked in qualifying coal mine employment for thirty years. Next, the administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b)(2000), and that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2000). Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erroneously found that the evidence established that the miner's death was due to pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers'

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refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001).

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); *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). For survivors' 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. *See* 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 Bradberry v. Director, OWCP*, 117 F.3d 1361, 21 BLR 2-166 (11th Cir. 1997).

[3] We affirm the administrative law judge's findings pursuant to Sections 718.202(a) (2000) and 718.203(b) (2000) inasmuch as these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 8-10.

Relevant to Section 718.205(c), employer argues that the administrative law judge erroneously credited the third opinion of Dr. Champion because it was produced over a year after the miner's death and was inconsistent with his first two opinions. Contrary to employer's argument, however, the administrative law judge rationally assigned great probative weight to Dr. Champion's opinion because he found the basis for his opinion in Dr. Champion's 1998 and 1999 letters where he diagnosed pneumoconiosis and found that it played a role in the miner's death, *i.e.*, the administrative law judge noted that Dr. Champion's opinion was based not only on his numerous personal examinations and observations, but on accurate coal mining, smoking and medical histories, objective testing during the miner's hospitalizations, symptoms, x-rays, and an abundance of medical notes of record[,]" and as such was documented and well-reasoned. Decision and Order at 9.[4] *See Bradberry*, *supra*; *Trumbo*, *supra*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); *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).

Employer also argues that the administrative law judge impermissibly accorded automatic deference to the opinion of Dr. Champion, as the miner's treating physician, because Dr. Champion had, in fact, treated the miner for only nine days prior to the miner's death, provided limited treatment records, was not present at the time of death, and had never seen the miner prior to May 1998. Rather, employer contends that Dr. Champion's nine-day consultative treatment of the miner following extensive heart surgery was not the kind of relationship that would give him any special expertise in determining the cause of death, and that the treatment records of the miner's "true" treating physicians, Drs. Moss and Shannon, did not show any evidence of chronic lung disease or any connection between lung disease and death.

[4] In a report dated August 26, 1998, Dr. Champion diagnosed "interstitial lung disease, most likely pneumoconiosis." He concluded, "his x-ray was quite compatible with fibrosis that may be due to exposure to coal dust and silica." Director's Exhibit 9. On December 22, 1998, Dr. Champion opined that the miner suffered from chronic obstructive pulmonary disease caused by his thirty-year coal mine employment. Director's Exhibit 40. On December 23, 1998, Dr. Champion opined, "it is possible that his death was contributed to by some pneumoconiosis, although he was in a postop state with his heart surgery, which may have been the major reason for his demise." Director's Exhibit 40. Based on his training, experience, and a review of the miner's medical records, Dr. Champion opined, "the lung damage from pneumoconiosis contributed to [the miner's] death because his damaged and weakened lungs rendered him less able to recover from surgery." Director's Exhibit 51.

Contrary to employer's argument, however, the administrative law judge did not automatically defer to the opinion of Dr. Champion solely because he was the miner's treating physician, but rather, because his opinion was documented and well-reasoned. *Id*.; *see Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Nor, contrary to employer's argument, has employer explained why Drs. Moss and Shannon, who treated the miner while he was hospitalized for coronary artery disease are "true" treating physicians or are in a better position than Dr. Champion to render an opinion regarding the cause of death. Employer's Brief at 8; Director's Exhibit 10. We cannot, therefore, say that the administrative law judge acted irrationally in crediting the reasoned opinion of Dr. Champion because he had "observed and treated the miner at least once a day for the last two weeks of his life." Decision and Order at 9; *see Bradberry*, *supra*; *see also Onderko v. Director, OWCP*, 14 BLR 1-2 (1989).

Employer additionally contends that the administrative law judge improperly rejected the opinions of Drs. Russakoff, Goldstein, and Fino because these physicians did not diagnose the existence of pneumoconiosis after the administrative law judge had found the existence of pneumoconiosis established. Specifically, employer argues that the administrative law judge's finding was incorrect because Dr. Russakoff actually opined that the miner may have had simple pneumoconiosis at the time of his death, Dr. Goldstein acknowledged evidence of interstitial changes in the miner's lungs, and Dr. Fino, who found that the evidence was insufficient to support a diagnosis of pneumoconiosis, did not rule out the possibility that pneumoconiosis was present.

The record shows, however, that Dr. Russakoff also opined that "the preponderance of the evidence would suggest that [the miner] did not have simple pneumoconiosis at the time of his death," Employer's Exhibit 1, that Dr. Goldstein stated, "I do not think that [the miner] had coal worker's pneumoconiosis," Director's Exhibit 53, and that Dr. Fino similarly opined that "there is insufficient objective medical evidence to justify a diagnosis of simple coal worker's pneumoconiosis," Employer's Exhibit 2. We cannot therefore say that the administrative law judge acted irrationally in according less weight to the opinions of Drs. Russakoff, Goldstein, and Fino. *See Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986). Because it is the role of the administrative law judge to determine both the relative credibility of the evidence and the inferences to be drawn therefrom and such determinations must be upheld unless they are unreasonable or unsupported by the record, we affirm the administrative law judge's weighing of the medical opinion evidence as her credibility determinations were rational and supported by substantial evidence. *See Bradberry*, *supra*; *Onderko*, *supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985); *see also Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). We, therefore, affirm the administrative law judge's determination that claimant established that pneumoconiosis substantially contributed to the miner's demise because it is rational, contains no reversible

error, and is supported by substantial evidence.

Accordingly, the administrative law judge properly found that claimant satisfied her burden of affirmatively establishing that pneumoconiosis caused the miner's death. *See Bradberry*, *supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Hence, we affirm the administrative law judge's Section 718.205(c)(2000) finding. *See* 20 C.F.R. §718.205(c); *Bradberry*, *supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge