

BRB No. 01-0761 BLA

MARTHA J. LEWIS	)	
(Widow of RANSOM LEWIS)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KENTUCKY MOUNTAIN COAL	)	DATE ISSUED:
COMPANY	)	
	)	
Employer	)	
	)	
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 - Denial Of Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

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

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order On Remand (94-BLA-01715) of Administrative Law Judge Ralph A. Romano denying benefits on this 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).<sup>1</sup> This case is on appeal to the Board for the third time. The prior history of the case is set forth in the Board's most recent

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<sup>1</sup> 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, refer to the amended regulations.

decision in *Lewis v. Kentucky Mountain Coal Co.*, BRB No.00-0366 BLA (Dec. 21, 2000) (unpub.). In that decision, the Board vacated the administrative law judge's finding that the evidence was insufficient to establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(4), and remanded the case for reevaluation of the evidence thereunder.<sup>2</sup> On remand, the administrative law judge concluded that the presumption was invoked pursuant to Section 727.203(a)(4), but that it was rebutted pursuant to 727.203(b)(3). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding the evidence sufficient to establish rebuttal of the interim presumption pursuant to Section 727.203(b). Employer and the Director, Office of Workers' Compensation Programs, are not participating in this 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).

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<sup>2</sup> The Board held that pursuant to Section 422(l) of the Act, claimant was entitled to have her survivor's claim considered under 20 C.F.R. Part 727. *Lewis v. Kentucky Mountain Coal Co.*, BRB No. 00-0366 BLR (Dec. 21, 2000); *Lewis v. Kentucky Mountain Coal Co.*, BRB No. 97-0344 BLA (1997); see *Pothering v. Parkson Coal Co.*, 861 F.3d 321, 12 BLR 2-60 (3d Cir. 1988); *Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989). 30 U.S.C. §932(l).

Claimant contends that the administrative law judge erred in his weighing of the medical opinions of record when he found the presumption rebutted pursuant to Section 727.203(b)(3).<sup>3</sup> The relevant medical opinion evidence consists of the opinions of: Dr. Anderson finding that arteriosclerotic heart disease was the cause of the miner's disability, Director's Exhibit 19; Dr. O'Neill finding no pneumoconiosis and obstructive airways disease due to cigarette smoking, Director's Exhibit 19; Dr. Broudy finding significant obstructive airways disease due to smoking, Director's Exhibits 10, 19, Employer's Exhibit 1; Dr. Lane finding no pneumoconiosis or significant pulmonary impairment arising out of coal mine employment, Director's Exhibit 19; Dr. Clarke finding that the miner was totally and permanently disabled due to pneumoconiosis, Director's Exhibit 19; Dr. Becknell finding pneumoconiosis and minimal impairment, Director's Exhibit 19; Dr. Raithatha not mentioning pneumoconiosis or any impairment, Director's Exhibit 19; Drs. Varghese and Cornett finding that the miner's death was due to respiratory arrest due at least in part to lung disease arising from coal mine employment and that a diagnosis of chronic obstructive pulmonary disease is interchangeable with a diagnosis of black lung disease, Director's Exhibits 10, 19.

In considering the medical opinion evidence, the administrative law judge permissibly accorded greater weight to the opinions of Drs. Anderson, Lane, Broudy and O'Neill, finding that the miner was not disabled as a result of pneumoconiosis, than to the contrary opinions of Drs. Clarke, Varghese and Cornett, based on their superior qualifications and because their opinions were better reasoned and documented. *See 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); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985). The administrative law judge also noted that Dr. Clarke's opinion was flawed because he did not consider claimant's significant smoking history. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983). Further, the administrative law judge permissibly accorded less weight to the opinions of Drs. Varghese and Cornett because they were not well reasoned or documented and as they were in direct conflict with the opinion of Dr. Broudy, a better qualified physician. *Dillon, supra*; *Kozele, supra*. Moreover, contrary to claimant's contention, the administrative law judge, in this case, was not required to accord more weight to examining physicians. *Cochran v. Consolidation Coal Co.*, 16 BLR 1-101, 1-104 (1993); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Cadwallader v. Director, OWCP*, 7 BLR 1-879 (1985); *Worthington v. United States Steel Corp.*, 7 BLR 1-522, 1-524 (1984); *see also Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Griffith v.*

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<sup>3</sup> We will not address the claimant's contention regarding Dr. Pellegrini's opinion as the Board affirmed the administrative law judge's weighing of this report in its previous decision. *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

*Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (1995); *Cf. Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). We therefore affirm the administrative law judge's finding that the evidence was sufficient to establish rebuttal of the interim presumption pursuant to 727.203(b)(3) as it is supported by substantial evidence and in accordance with law. *See Gibas v. Saginaw Mining Co.*, 748 F.2d 1112, 7 BLR 2-53 (6th Cir. 1984), *cert. denied*, 471 U.S. 1116 (1985).

Accordingly, the administrative law judge's Decision and Order On Remand-Denying Benefits in this survivor's claim is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge