

BRB No. 05-0750 BLA

FRANCES L. CROUSE)
(Widow of DONALD W. CROUSE))
)
 Claimant-Petitioner)
)
 v.)
)
 BLACK WATCH/DIAMOND COAL) DATE ISSUED: 01/24/2006
 CORPORATION)
)
 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 Denying Benefits of Stephen L. Purcell,
Administrative Law Judge, United States Department of Labor.

Frances L. Crouse, Cedar Bluff, Virginia, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for
employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (2004-BLA-06567) of Administrative Law Judge Stephen L. Purcell 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). After granting claimant's unopposed motion for a decision on the record, the administrative law judge credited the miner with sixteen years of qualifying coal mine employment, and adjudicated this survivor's claim, filed on March 10, 2003, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the weight of the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R.

§718.202(a)(2), (4), 718.203(b), but insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant generally challenges the denial of benefits, and specifically challenges the administrative law judge's weighing of the evidence regarding the cause of the miner's death under Section 718.205(c). Claimant also asserts that the medical evidence of record in the living miner's claims, as well as medical evidence, treatment records and hospitalization reports that were not related to the treatment of the miner's lung impairment pursuant to the provisions at 20 C.F.R. §725.414(a)(4), should have been stricken from the record in her survivor's claim. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response in this appeal.

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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). If the findings of fact and conclusions of law of the administrative law judge 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).

In order to establish entitlement to survivor's benefits in a claim filed on or after January 1, 1982, claimant must establish that the miner had 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, that the miner's death was caused by complications of pneumoconiosis, or that the miner suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 718.304; *see 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). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see also Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).¹

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner was last employed in the coal mine industry in the Commonwealth of Virginia. Director's Exhibits 1, 2, 5; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we hold that the Decision and Order is supported by substantial evidence and contains no reversible error. Although claimant contends that the opinions of the autopsy prosector, Dr. Turjman, and the miner's treating physician, Dr. Clary, are sufficient to establish that the miner's death was due to pneumoconiosis and should have been accorded greater weight, Claimant's Brief at 2-4, 6-7, claimant's arguments amount to a request to reweigh the evidence, which is beyond the Board's scope of review. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Contrary to claimant's arguments, the administrative law judge was not required to credit the opinion of the autopsy prosector solely because Dr. Turjman had the opportunity to view both the slides and the miner's chest cavity. *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000). Further, the administrative law judge need not accept the opinion of a treating physician if the physician's conclusions are not well-reasoned. *See 20 C.F.R. §718.104(d)(5); Nat'l Mining Ass'n v. U.S. Dep't of Labor*, 292 F.3d 849, 23 BLR 2-124 (D.C. Cir. 2002).

In the present case, the administrative law judge accurately reviewed the conflicting evidence of record relevant to the cause of death, and determined that although the miner's treatment records listed pneumoconiosis as a diagnosis, they did not indicate that pneumoconiosis contributed to his death; further, the miner's death certificate did not mention pneumoconiosis.² Decision and Order at 4-10, 12; Director's Exhibits 23, 30. While Dr. Turjman opined that the miner's compromised pulmonary status "most likely" related to pneumoconiosis "must have" contributed to the terminal event resulting in death, *see* Director's Exhibit 25, and Dr. Clary opined that, in view of the miner's prior history of pneumoconiosis and autopsy reports showing congestion and edema of both lower lobes, "it appears" that pneumoconiosis contributed to death, *see* Director's Exhibit 31, the administrative law judge permissibly discounted these opinions as he found them to be equivocal, inadequately explained, and insufficiently reasoned to establish that the miner's death was due to pneumoconiosis at Section 718.205(c). Decision and Order at 12; *see Sparks*, 213 F.3d 186, 22 BLR 2-251; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). As the administrative law judge's findings are supported by substantial evidence, and the remaining evidence of record does not support claimant's position, claimant is precluded from entitlement to benefits. *See Shuff*, 967 F.2d 977, 16 BLR 2-90. Consequently, we need not reach claimant's evidentiary challenges pursuant to Section 725.414, since any error would not affect the outcome of

² The miner's death certificate, signed by Dr. Patel, listed the immediate cause of death as acute respiratory failure due to septicemia and pneumonia, with glioblastoma multiforme and pancytopenia listed as other significant conditions. Decision and Order at 8; Director's Exhibit 23.

this case and thus would constitute harmless error. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge