

BRB No. 99-0193 BLA

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| BURDIS MAE SPRADLIN           | ) |                    |
| (Widow of ROBERT SPRADLIN)    | ) |                    |
|                               | ) |                    |
| Claimant-Petitioner           | ) |                    |
|                               | ) |                    |
| v.                            | ) | DATE ISSUED:       |
|                               | ) |                    |
| DIRECTOR, OFFICE OF WORKERS'  | ) |                    |
| COMPENSATION PROGRAMS, UNITED | ) |                    |
| STATES DEPARTMENT OF LABOR    | ) |                    |
|                               | ) |                    |
| Respondent                    | ) | DECISION and ORDER |

Appeal of the Decision and Order - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Burdis Mae Spradlin, West Van Lear, Kentucky, *pro se*.

Barry H. Joyner (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, without the assistance of legal counsel, appeals the Decision and Order (97-BLA-868) of Administrative Law Judge Daniel J. Roketenetz denying benefits on a miner's claim and 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). The miner filed his claim for black lung benefits on January 12, 1988 and on June 10, 1990, while the claim was pending, the miner died. Decision and Order at 3. On January 4, 1991, the miner's widow, claimant herein, filed a survivor's claim. Decision and Order at 3; Director's Exhibit 39. Subsequently, both claims were consolidated. The district director denied both claims and the case was referred to the Office of Administrative

Law Judges. The administrative law judge credited the miner with twelve years of coal mine employment and adjudicated the claims pursuant to 20 C.F.R. Part 718. With regard to the miner's claim, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1)-(4). With respect to the survivor's claim, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis and also found that claimant failed to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied on both claims. On appeal herein, claimant generally contends that benefits should be awarded. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the denial of benefits.

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. *See McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in the miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner suffered from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis was totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure of claimant to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

After consideration of the administrative law judge's Decision and Order, the arguments of the parties 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. The administrative law judge rationally found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to any of the provisions contained in 20 C.F.R. §718.202(a). The administrative law judge discussed the thirty-three interpretations of seven x-rays and rationally concluded that the preponderance of the x-ray evidence was negative for the existence of pneumoconiosis as there were only six positive readings and only three of the six readings were rendered by physicians with radiological qualifications. Decision and Order at 4-5. The administrative law judge permissibly relied upon the qualifications of the readers in his consideration of the x-ray evidence and rationally accorded greater weight to the preponderance of negative x-ray interpretations by the most qualified readers. *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990);

*Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 5. Inasmuch as the administrative law judge weighed all of the x-ray interpretations and reasonably concluded that the preponderance of the evidence did not establish the existence of pneumoconiosis, we affirm the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).

Further, the administrative law judge properly concluded that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2) as there was no biopsy or autopsy evidence in the record. *See* 20 C.F.R. §718.202(a)(2); Decision and Order at 9. In addition, the administrative law judge properly found that the presumptions enumerated at Section 718.202(a)(3) are inapplicable to this claim as the record contains no evidence of complicated pneumoconiosis, *see* 20 C.F.R. §718.304; claimant filed his claim after January 1, 1982, *see* 20 C.F.R. §718.305; and the miner did not die prior to March 1978. *See* 20 C.F.R. §718.306; Decision and Order at 5-6. Consequently, we affirm the administrative law judge's finding that claimant is precluded from establishing the existence of pneumoconiosis pursuant to Section 718.202(a)(2)-(3).

In addition, the administrative law judge properly considered the medical opinion evidence of record and acted within his discretion in concluding that claimant failed to establish the existence of pneumoconiosis by a preponderance of the evidence pursuant to Section 718.202(a)(4). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). In so finding, the administrative law judge permissibly concluded that the opinions of Drs. Sutherland, Musgrave and Belhasen, who diagnosed the existence of pneumoconiosis in part on discredited positive x-ray readings, were outweighed by the contrary opinions of Drs. Wright, Dahhan, Vuskovich, Lane, Branscomb, Fino and Broudy, based on the documentation and reasoning contained in their reports, their superior qualifications and because they were supported by the objective evidence. *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-146 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); Decision and Order at 6-9; Director's Exhibits 11, 29-30, 38, 42, 44. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *Clark, supra; Perry, supra; Lucostic, supra; Oggero; supra*. The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Inasmuch as the administrative law judge's finding that the evidence of record failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) is supported by substantial evidence, it is affirmed.

In adjudicating the claim which was filed by the survivor after January 1, 1982, the administrative law judge properly required claimant to establish that the miner suffered from pneumoconiosis, *see* 20 C.F.R. §718.202(a), and that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) in order to establish entitlement to survivor's benefits. *See* 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). For survivor's claims filed after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2), (4). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it actually hastens the miner's death. *See* 20 C.F.R. §§718.1, 718.205, 725.201; *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *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).

The administrative law judge correctly found that as claimant failed to establish the existence of pneumoconiosis, as discussed above, she cannot establish that the miner's death was due to pneumoconiosis. *Trumbo, supra*; Decision and Order at 11. Moreover, the administrative law judge correctly noted that the only evidence relevant to the issue of the cause of the miner's death failed to establish death due to pneumoconiosis.<sup>1</sup> *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown, supra*; *Clark, supra*; *Lucostic, supra*; Decision and Order at 11-12; Director's Exhibit 44. Thus, we affirm the administrative law judge's determination that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Inasmuch as claimant has failed to establish the existence of pneumoconiosis or that the miner's death was due to pneumoconiosis, requisite elements of entitlement under 20 C.F.R. Part 718, entitlement thereunder is precluded. *See Trumbo, supra*; *Neeley, supra*; *Trent, supra*. Consequently, we affirm the administrative law judge's denial of benefits in the survivor's claim as it is supported by substantial evidence and is in accordance with law.

Accordingly, the Decision and Order of the administrative law judge denying benefits in the miner's claim and the survivor's claim is affirmed.

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<sup>1</sup> The death certificate listed the immediate cause of death as urosepsis and chronic renal failure, cerebrovascular accident, arteriosclerotic cerebrovascular disease, right hip fracture and cardiorespiratory arrest as underlying causes, but did not mention pneumoconiosis. Dr. Fino attributed the miner's death to complications of atherosclerotic vascular disease and hypertension and not pneumoconiosis. Director's Exhibit 44.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge