BRB No. 03-0193 BLA

PAULINE LAYNE (Widow of JAKE LAYNE)	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED: 08/29/2003
EAST BEAVER COAL COMPANY	)	
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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Pauline Layne, Martin, Kentucky, *pro se.*

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

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

PER CURIAM:

Claimant,[1] the miner=s widow, without the assistance of legal counsel,[2] appeals the

[1] Claimant is Pauline Layne, the surviving spouse of the deceased miner, Jake Layne, who died on December 22, 1995. Decision and Order at 3; Director=s Exhibit 10.

[2] Susie Davis, a benefits counselor with Kentucky Black Lung Association of Pikeville, Kentucky, requested, on behalf of claimant, that the Board review the administrative law judge=s decision, but Ms. Davis is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Decision and Order (2001-BLA-406) of Administrative Law Judge Thomas F. Phalen, Jr., 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).[3] Claimant filed this claim on January 25, 2000. Based on a stipulation by the parties, the administrative law judge credited the miner with at least thirty-four years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a)(1)-(4). Accordingly, benefits were denied. On appeal, claimant generally contests the denial of benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers= Compensation Programs, has not filed a brief on the merits 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. *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, are supported by substantial evidence, and are 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).

[3] 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 20 C.F.R. Parts 718, 722, 725 and 726 (2002).

In order to establish entitlement to survivor=s benefits under 20 C.F.R. Part 718 in a claim filed 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(c), 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 Asubstantially contributing cause@ of the miner=s death if it hastens the miner=s death.[4] 20 C.F.R. '718.205(c)(5); *see Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-1365 (6th Cir. 1993).

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 it contains no reversible error and must therefore be affirmed.

In his consideration of the x-ray evidence pursuant to Section 718.202(a)(1), the administrative law judge listed and discussed the fifteen readings of nine x-rays, as well as the qualifications of the readers. Decision and Order at 4-5, 9-10; Director=s Exhibits 13, 31; Employer=s Exhibits 2, 6. The administrative law judge noted there was only one positive x-ray reading by a B reader,[5] whereas there were five negative x-rays and many of the readings were by B readers or by dually qualified B readers and Board-certified radiologists.[6] Decision and Order at 10. The administrative law judge then permissibly

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner=s coal mine employment occurred in the Commonwealth of Kentucky. Director=s Exhibit 2; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

[5] The administrative law judge identified Dr. Anderson as a B reader whereas the record does not reflect this level of expertise. However, the administrative law judge did not indicate that Dr. Jakobson was a dually qualified B reader and Board-certified radiologist. Therefore, the administrative law judge correctly stated that only one B reader interpreted an x-ray as positive and, thus, this error is harmless as the clear preponderance of the x-ray readings is negative for pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[6] Expert readers of x-rays are Board-certified radiologists and/or "NIOSH" certified B readers. *See Mullins Coal Company, Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 11

accorded greater weight to the x-ray interpretations of the readers with superior qualifications and to the preponderance of negative x-ray readings. *See Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc)*; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order at 10. We, therefore, affirm the administrative law judge=s finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) as it is supported by substantial evidence.

BLR 2-1 (1987).

In weighing the medical opinions of record on the issue of the existence of pneumoconiosis pursuant to Section 718.202(a)(4), the administrative law judge also rationally concluded that this evidence failed to establish the existence of pneumoconiosis by a preponderance of the evidence. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). The administrative law judge reasonably accorded greater weight to the medical opinions of Drs. Rosenberg, Fino and Broudy, which stated that the miner did not have pneumoconiosis or any other occupationally acquired pulmonary condition, than to the contrary opinions of Drs. Sutherland, Anderson, Wright, Penman, Hyden and Sundaram.[7] *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); Decision and Order at 11. The administrative law judge, in a rational exercise of discretion as the fact-finder, permissibly concluded that the opinions of the physicians supportive of claimant=s burden are contradicted by the objective medical evidence and are not well-documented and well-reasoned since the physicians do not explain or offer sufficient support for their diagnoses of pneumoconiosis. The administrative law judge permissibly gave less weight to the opinions of Drs. Anderson, Wright, Penman and Hyden because he found that they did not provide an adequate basis for their diagnoses beyond positive x-rays, whereas the administrative law judge determined that the weight of the x-ray evidence was negative. *See Clark*, 12 BLR 1-149; *Fuller v. Gibraltar Corp*., 6 BLR 1-1291 (1984); Decision and Order 11.

In addition, the administrative law judge acted within his discretion as fact-finder in concluding that the diagnosis of pneumoconiosis by Dr. Sutherland in his report and the statement of Dr. Sundaram in the hospitalization records and treatment notes, noting a history of pneumoconiosis, failed to identify medical evidence supportive of their diagnoses. Decision and Order at 11; Director=s Exhibits 12, 23, 31. Moreover, the administrative law judge reasonably found that the opinions of Drs. Rosenberg, Fino and Broudy, were entitled to the greatest weight as these opinions were well-reasoned, well-documented and supported by the objective medical tests and clinical data which the physicians evaluated thoroughly. *See Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Worhach*, 17 BLR 1-105; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark*, 12 BLR 1-149; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Fields v. Island Creek Coal Co*., 10 BLR 1-19 (1987); *Perry*, 9 BLR 1-1; Decision and Order at 11.

Claimant has the general burden of establishing entitlement and bears the risk of non-

[7]The administrative law judge correctly noted that Drs. O=Neill, Broudy, Bryson and Cooper did not diagnose pneumoconiosis in their 1984 examination reports.

persuasion if his evidence is found insufficient to establish a crucial element. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry*, 9 BLR 1-1; *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *White v. Director, OWCP*, 6 BLR 1-368 (1983). The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark*, 12 BLR 1-149; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Because the administrative law judge weighed all of the medical opinions and rationally concluded that the preponderance of the evidence did not establish the existence of pneumoconiosis, we affirm his finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *See Clark*, 12 BLR 1-149; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic*, 8 BLR 1-146. Consequently, we affirm the administrative law judge=s finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a) as it is supported by substantial evidence and is in accordance with law. Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement under 20 C.F.R. Part 718, entitlement thereunder is precluded. *See Trumbo*, 17 BLR 1-85; *Neeley*, 11 BLR 1-85; *Trent*, 11 BLR 1-26. Consequently, we affirm the administrative law judge=s denial of benefits in this survivor=s claim.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge