BRB No. 97-1694 BLA

LULA MARIE TAYLOR (Widow of JAMES TAYLOR) Claimant-Petitioner v. TANSY BETH MINING CO., INC. and OLD REPUBLIC INSURANCE CO. Employer/Carrier- Respondents 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 of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Lula Marie Taylor, Charleston, West Virginia, *pro se*.

Mark E. Solomons (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, widow of the deceased miner, and without the assistance of counsel, appeals the Decision and Order (94-BLA-1418) of Administrative Law Judge Daniel L. Leland, 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). Based on the date of filing, the administrative law judge adjudicated the claim pursuant

to 20 C.F.R. Part 718.[1] The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and thus insufficient to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant generally contends that she is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he would not participate 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. *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 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).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 on a survivor's claim filed after January 1, 1982, 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, or substantially contributed to, pneumoconiosis. *See* 20 C.F.R.

[1] The miner filed his claim for benefits on July 27, 1979. Director's Exhibit 1. The district director found the miner entitled to benefits on January 2, 1980. Director's Exhibit 30. The miner died June 7, 1980. Director's Exhibit 10. Claimant filed a claim for benefits on October 28, 1980. Director's Exhibit 30. Administrative Law Judge Leonard N. Lawrence awarded benefits on both claims. On appeal, the Board reversed the award and denied benefits. Director's Exhibit 30. An appeal was dismissed by the United States Court of Appeals for the Sixth Circuit on September 4, 1991. Director's Exhibit 30. Claimant filed the instant claim on June 8, 1998, which was denied on October 25, 1993. Director's Exhibits 1, 14.

§§718.1, 718.205, 718.201; *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).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal 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, in the instant case, permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(1) as the preponderance of the x-rays were read as negative by physicians with superior qualifications. Director's Exhibits 37, 38, 40; Decision and Order at 4; *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). The administrative law judge also properly found the evidence insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and (3) as the biopsies of record did not show any evidence of pneumoconiosis, no autopsy was performed and there is no evidence of complicated pneumoconiosis in the record in this claim filed after January 1, 1982. *See* 20 C.F.R. §§718.202(a)(2), (3), 718.304, 718.305, 718.306; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986); Director's Exhibit 16; Decision and Order at 4.

Further, the administrative law judge considered the entirety of the medical opinion evidence and permissibly accorded greater weight to the opinions of Drs. Sutherland and Broudy, finding no pneumoconiosis, than to Dr. Martin's diagnosis of silicosis, as their opinions are better reasoned, as Dr. Broudy is board-certified in internal medicine and pulmonary disease, and as Dr. Martin failed to provide any reasoning for his diagnosis of silicosis. Director's Exhibits 10, 16, 39; Employer's Exhibits 1, 2; Decision and Order at 4; *Clark, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Perry, supra*; *Piccin, supra*. 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, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). 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 the existence of pneumoconiosis has not been established, entitlement to benefits in this survivor's claim is precluded.[2] *Trumbo, supra*.

[2] Inasmuch as we affirm the denial of benefits based on the administrative law judge's consideration of the merits, we need not address the duplicate claims issue in this case. 20 C.F.R. §725.309; *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996) *rev'g en banc Lisa Lee Mines v. Director,*

OWCP [Rutter], 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995); *Dotson v. Director, OWCP*, 14 BLR 1-10 (1990).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge