

BRB No. 98-1445 BLA

ANNA WILLIAMS)	
(Widow of DELBERT WILLIAMS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CLINCHFIELD COAL COMPANY)	DATE ISSUED:
)	
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 of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

Daniel Sachs, Springfield, Virginia, for claimant.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-1186) of Administrative Law Judge Stuart A. Levin 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). The administrative law judge credited the miner with eighteen and one-half years of qualifying coal mine employment and adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge found the miner suffered from pneumoconiosis arising out of coal mine employment, *see* 20 C.F.R. §§718.202(a), 718.203(b), but found that the evidence of record failed 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 asserts that the administrative law judge erred in his

consideration of the medical opinion evidence pursuant to 20 C.F.R. §718.205(c)(2). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.

The Board's scope of review is defined by statute. We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and 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 under 20 C.F.R. Part 718 in a survivor's claim filed after January 1, 1982, claimant must establish that the miner has pneumoconiosis, that the pneumoconiosis arose out of coal mine employment and that the miner's death was due to, or hastened by, pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.205. Failure to establish any element precludes entitlement. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (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 administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. In adjudicating this claim which was filed by the survivor after January 1, 1982, the administrative law judge properly required claimant to establish 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; supra*. In finding that the evidence of record was insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c)(1) and (c)(2), the administrative law judge permissibly relied upon the death certificate, autopsy report of Dr. Ganote and medical reports of Drs. Muakata, Tomashefski, Caffrey, Naeye and Fino, none of whom found that pneumoconiosis played a role in or hastened the miner's death.¹ *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 3-5; Director's Exhibits 8-10, 22; Employer's Exhibits 3-4, 6-7. In addition, claimant's assertion that the administrative law judge erred in failing to specifically discuss

¹ The administrative law judge's finding that the record is devoid of evidence that would establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304 and, thus, is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(3) is unchallenged on appeal and is therefore affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); *see Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Dr. Robinette's March 20, 1992, medical opinion diagnosing "significant bronchitis and symptoms of coal workers' pneumoconiosis with industrial related bronchitic type symptoms" is without merit. Contrary to claimant's assertion, Dr. Robinette did not diagnose emphysema nor did he attribute claimant's emphysema to coal mine employment. Thus, the administrative law judge's failure to consider this report authored prior to the miner's death in his discussion of whether death was due to pneumoconiosis does not impact the outcome of this case. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). The administrative law judge has broad discretion in weighing and assessing the evidence of record in determining whether a party has met its burden of proof and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). 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). Claimant's failure to establish death due to pneumoconiosis, a requisite element of entitlement under 20 C.F.R. Part 718 in this survivor's claim, precludes entitlement thereunder. *Shuff, supra; Trent, supra.*

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge