BRB Nos. 04-0349 BLA
and 04-0349 BLA-A

GREGORY ELLIS PROFFIT (Son of CHARLIE PROFFIT)	)	
Claimant-Petitioner Cross-Respondent	)	
v.	)	
	)	DATE ISSUED: 01/31/2005
MEADOWS COAL COMPANY/ JEWELL RESOURCES	)	
Employer-Respondent Cross-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Lawrence L. Moise, III, Staunton, Virginia, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

Jeffrey S. Goldberg (Howard Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals and employer cross-appeals the Decision and Order (01-BLA-0984) of Administrative Law Judge Lee J. Romero, Jr. denying benefits on claims 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).[2] This case involves a miner's claim filed on February 8, 1994 and a survivor's claim filed on August 29, 2000.

In a Decision and Order dated March 25, 1999,[3] Administrative Law Judge Edward Terhune Miller addressed the merits of the miner's 1994 claim. After crediting the miner with at least eleven years of coal mine employment, Judge Miller found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). Director's Exhibit 121. Accordingly, Judge Miller denied benefits. *Id.*

Jerry Lee Cook, the administrator of the miner's estate, filed an appeal with the Board on April 26, 1999. Director's Exhibit 122. However, on May 3, 1999, Mr. Cook requested that the Board remand the case for modification proceedings. Director's Exhibit 123. By Order dated May 12, 1999, the Board dismissed Mr. Cook's appeal of the miner's claim and remanded the case to the district director for modification proceedings.[4] *Cook v. Meadow Coal/Jewell Resources [Proffit]*, BRB No. 99-0775 BLA (May 12, 1999) (Order) (unpublished).

---

[1]Claimant is the son of the deceased miner who died on January 21, 1999. Director's Exhibit 152.

[2]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). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3]The miner died while his claim was pending before the Office of Administrative Law Judges. Director's Exhibit 152.

[4]The Board informed Mr. Cook that the miner's case would be reinstated only if he requested reinstatement. *Cook v. Meadow Coal/Jewell Resources [Proffit]*, BRB No. 99-0775 BLA (May 12, 1999) (Order) (unpublished). The Board further informed Mr. Cook that his request for reinstatement had to be filed with the Board within thirty days from the date the decision on modification was issued and had to be identified by the Board's docket number, BRB No. 99-0775 BLA. *Id.*

In a Proposed Decision and Order dated October 6, 1999, the district director denied the miner's request for modification. Director's Exhibit 127. The miner's claim was subsequently forwarded to the Office of Administrative Law Judges for a formal hearing. Director's Exhibits 128, 131.

While the miner's claim was pending before the Office of Administrative Law Judges, claimant filed a survivor's claim on August 29, 2000. Director's Exhibit 148. By Order of Remand dated September 1, 2000, Administrative Law Judge John C. Holmes remanded the miner's claim to the district director to be joined with the survivor's claim. Director's Exhibit 147. The two claims were consolidated on December 12, 2000. Director's Exhibit 160.

In a proposed Decision and Order dated May 4, 2001, the district director proposed that the October 6, 1999 denial of the miner's claim be modified to a finding of entitlement. Director's Exhibit 169. In a letter dated May 4, 2001, the district director also determined that claimant was entitled to survivor's benefits. Director's Exhibit 170. On June 28, 2001, the miner's claim and the survivor's claim were forwarded to the Office of Administrative Law Judges for a formal hearing. Director's Exhibits 174, 175.

Pursuant to a conference call on August 14, 2003, the parties agreed to submit the case on the record. Joint Exhibit 1. The parties stipulated, *inter alia*, that the hearing scheduled for August 26, 2003 would be cancelled and that the record would be closed on that date in regard to the admission of any additional evidence. *Id.*

In a Decision and Order dated October 1, 2003, Administrative Law Judge Lee J. Romero, Jr. (the administrative law judge) found that employer was properly designated as the responsible operator. After crediting the miner with 8.97 years of coal mine employment, the administrative law judge found that the autopsy evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2).[5] The administrative law judge also found that the evidence was sufficient to establish that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(c). The administrative law judge further found that the pulmonary function study evidence was sufficient to support a finding of total disability.[6] The administrative

[5]The administrative law judge found that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge also found that the miner was not entitled to any of the presumptions set forth at 20 C.F.R §718.202(a)(3).

[6]The administrative law judge, however, found that the arterial blood gas study evidence was insufficient to support a finding of total disability.

law judge, however found that the evidence was insufficient to establish that the miner's total disability was due to his pneumoconiosis. Accordingly, the administrative law judge denied benefits in the miner's claim. In regard to the survivor's claim, the administrative law judge found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The administrative law judge, therefore, also denied benefits in the survivor's claim.

Claimant subsequently filed a request for reconsideration. In a Decision and Order on Reconsideration dated December 12, 2003, the administrative law judge reopened the record for the limited purpose of admitting two exhibits submitted by claimant. Upon consideration of claimant's additional evidence, the administrative law judge found no basis to change his previous findings. The administrative law judge, therefore, denied claimant's request for reconsideration.

On appeal, claimant contends that the administrative law judge erred in crediting the miner with only 8.97 years of coal mine employment. Claimant also argues that the administrative law judge erred in identifying employer as the responsible operator. Claimant further contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of complicated pneumoconiosis. Claimant also contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's total disability was due to pneumoconiosis. Claimant finally argues that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Employer responds in support of the administrative law judge's denial of benefits in both the miner's claim and the survivor's claim. Employer has filed a cross-appeal, contending that the administrative law judge erred in designating it as the responsible operator. The Director, Office of Workers' Compensation Programs, has filed a limited response, arguing in support of the administrative law judge's designation of employer as the responsible operator.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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).

Claimant initially contends that the administrative law judge erred in finding that the miner was not entitled to the irrebuttable presumption set out at 20 C.F.R. §718.304. Section 718.304 provides that there is an irrebuttable presumption that a miner was totally disabled due to pneumoconiosis if (a) an x-ray of the miner's lungs shows an opacity greater than one centimeter in diameter; (b) a biopsy or autopsy shows massive lesions in the lung; or (c) when diagnosed by other means the condition could reasonably be expected to reveal a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. The

introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption found at 20 C.F.R. §718.304. The administrative law judge must examine all the evidence on this issue, *i.e.*, evidence of simple and complicated pneumoconiosis, as well as evidence of no pneumoconiosis, resolve the conflicts, and make a finding of fact. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991) (*en banc*); *Truitt v. North American Coal Corp.*, 2 BLR 1-199 (1979), *aff'd sub nom. Director, OWCP v. North American Coal Corp.*, 626 F.2d 1137, 2 BLR 2-45 (3d Cir. 1980).

Claimant contends that the administrative law judge erred in finding the autopsy evidence insufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b).[7] Claimant argues that the administrative law judge erred in finding Dr. Perper's opinion insufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. The administrative law judge properly noted that Dr. Perper was the only physician who interpreted the autopsy evidence as revealing the presence of complicated pneumoconiosis. Decision and Order at 55. The administrative law judge questioned Dr. Perper's opinion in part because the doctor acknowledged that the lesions upon which he based his diagnosis of complicated pneumoconiosis "did not include some features seen in complicated coal workers' pneumoconiosis…." *Id.* at 55, 58; Director's Exhibit 154. The administrative law judge also found that Dr. Perper's diagnosis of complicated pneumoconiosis was called into question by the contrary opinions of two reviewing Board-certified pathologists, Drs. Naeye and Tomashefski.[8] *Id.* at 58. The administrative law judge acted within his discretion in finding that the opinions rendered by Drs. Naeye and Tomashefski were

[7]Because no party challenges the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a), this finding is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). The administrative law judge did not identify any evidence that was relevant to 20 C.F.R. §718.304(c). We note that none of the parties has identified any evidence relevant to a finding of complicated pneumoconiosis pursuant to this subsection.

[8]In addition, the administrative law judge properly noted that Dr. Joyce, the autopsy prosector, did not diagnose the existence of complicated pneumoconiosis or progressive massive fibrosis. Three reviewing physicians, Drs. McSharry, Tuteur and Castle, also opined that the miner did not suffer from complicated pneumoconiosis. Employer's Exhibits 2-4.

better reasoned than that of Dr. Perper.[9] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304.[10]

Claimant also argues that the administrative law judge erred in finding the evidence insufficient to establish that the miner's total disability was due to

---

[9]The administrative law judge found that the opinions of Drs. Naeye and Tomashefski were "persuasive and cogent" in establishing that the miner's lesions were not the result of complicated pneumoconiosis. Decision and Order at 58. Dr. Naeye found that black pigment was present in only small quantities in the lungs at subpleural locations and adjacent to small arteries and airways. Employer's Exhibit 2. Dr. Naeye further found that the six largest deposits ranged from 1 to 4 millimeters, which would categorize them as anthracotic micronodules. *Id.* Dr. Tomashefski explained that the miner's lesions were the result of post-inflammatory scars. Director's Exhibit 168. Dr. Tomashefski explained that this finding was consistent with the miner's history of repeated episodes of acute purulent bronchitis and bronchopneumonia. *Id.*

[10]The administrative law judge also properly noted that he was required to conduct an equivalency determination analysis pursuant to the decisions of the United States Court of Appeals for the Fourth Circuit in *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000), and *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 22 BLR 2-554 (4th Cir. 1999). *See also Braenovich v. Cannelton Industries, Inc./Cypress Max*, 22 BLR 1-236 (2003) (Gabauer, J., concurring). In *Blankenship*, the Fourth Circuit held that because the irrebuttable presumption found at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by Section 718.304, provides three different ways of diagnosing complicated pneumoconiosis, the administrative law judge must make an equivalency determination to make certain that regardless of which diagnostic technique is used, the same underlying condition triggers the irrebuttable presumption, *i.e.*, if a "massive lesion" is found on autopsy, it would appear as an opacity greater than one centimeter in diameter on an x-ray. Consequently, the central question does not concern the size of a lesion viewed on autopsy; it concerns the size of the lesion as it would appear on an x-ray.

In this case, the administrative law judge found that there was no evidence that the 0.7, 0.9 and 2.5 cm. lesions identified by Dr. Perper would appear as opacities greater than one centimeter in diameter on an x-ray. Because no party challenges this finding, it is affirmed. *Skrack, supra*.

pneumoconiosis pursuant to 20 C.F.R. §718.204(c).[11] In finding the evidence insufficient to establish that the miner's total disability was due to pneumoconiosis, the administrative law judge credited the opinions of Drs. Naeye, Tomashefski and Tuteur that the miner's total disability was not attributable to his pneumoconiosis, over the contrary opinions of Drs. Iosif and Perper.[12] Decision and Order at 62-65.

Claimant argues that the administrative law judge erred in not according greater weight to Dr. Iosif's opinion based upon his status as the miner's treating physician. Section 718.104(d) provides that the weight given to the opinion of a treating physician shall "be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5). In this case, the administrative law judge discredited Dr. Iosif's finding regarding the etiology of the miner's total disability because the doctor failed to address the effect of the miner's significant smoking history on his disabling respiratory impairment. Decision and Order at 62; Claimant's Exhibit 1. An administrative law judge may properly discredit the opinion of a physician that is based upon an inaccurate or incomplete picture of the miner's health. *See Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Rickey v. Director, OWCP*, 7 BLR 1-106 (1984). The administrative law judge also acted within his discretion in finding that the opinions of Drs. Naeye and

---

[11] Revised Section 718.204(c)(1) provides that:

> A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in §718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:
>
> (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
>
> (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1).

[12] Relying upon *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996) and *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995), the administrative law judge found that the opinions of Drs. McSharry, Sargent, Fino and Castle that the miner's total disability was not due to pneumoconiosis were based upon an improper assumption that pneumoconiosis cannot cause an obstructive impairment. Decision and Order at 64-65.

Tomashefski (and supported by Dr. Tuteur's opinion) regarding the etiology of the miner's total disability were better reasoned than the opinions of Drs. Iosif and Perper.[13] *See Clark, supra*; *Lucostic, supra*; Decision and Order at 65.

We reject claimant's argument that because Dr. Tuteur did not examine the miner, his opinion cannot be credited unless it is corroborated by the opinion of an examining physician. The United States Court of Appeals for the Fourth Circuit has held that an administrative law judge may not discredit a physician's opinion solely because the physician did not examine the claimant. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

Claimant's remaining statements neither raise any substantive issue nor identify any specific error on the part of the administrative law judge in determining that the evidence is insufficient to establish that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). Consequently, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).

In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), an essential element of entitlement, we affirm the administrative law judge's denial of benefits in the miner's claim. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

In regard to his survivor's claim, claimant argues that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

Because the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R.

[13]Dr. Iosif offered no basis for his conclusion that the miner's coal workers' pneumoconiosis "certainly contributed to the progressive deterioration of [the miner's] respiratory status." *See* Claimant's Exhibit 1. Dr. Perper failed to explain the basis for his conclusion that the miner's coal workers' pneumoconiosis "was a substantial contributing cause of [the miner's] disability." Director's Exhibit 154.

§718.205(c).[14] *See* 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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 Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

While Drs. Iosif and Perper opined that the miner's death was due to pneumoconiosis, Director's Exhibit 154; Claimant's Exhibit 1; Drs. Tomashefski, Naeye, Tuteur, McSharry and Castle opined that the miner's death was not due to pneumoconiosis.[15] Director's Exhibits 168, 172; Employer's Exhibits 2-4.

In his consideration of whether the evidence was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), the administrative law judge stated:

> I find the medical opinions of Drs. Iosif and Perper are not as well-reasoned and factually supported as the medical opinions of Drs. Naeye and

---

[14]Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

> (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
> (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
> (3) Where the presumption set forth at §718.304 is applicable.
> (4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.
> (5) 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).

[15]Dr. Joyce, the autopsy prosector, attributed the miner's death to "respiratory system decompensation." Director's Exhibit 153.

> Tomashefski, who persuasively opined [that the] [m]iner's death was not caused or hastened by the presence of pneumoconiosis. I find [that the] [m]iner's principal cause of death was respiratory failure due to emphysema, pneumonia and bronchitis, pursuant to the preponderance of the pathological opinions which are supported by [the] [m]iner's autopsy report and slides as well as [the] [m]iner's discharge summary and death certificate.
>
> Likewise, the opinions of Drs. Naeye, Tomashefski and Tuteur are persuasive in establishing that [the] [m]iner's coal workers' pneumoconiosis was insufficient to cause measurable abnormalities while living or otherwise contribute to or hasten [the] [m]iner's death. Accordingly, I find Claimant failed to establish [that the] [m]iner's death due to complications from cigarette smoking was hastened or substantially contributed to by his coal workers' pneumoconiosis.
>
> In light of the foregoing, I find Claimant failed to present competent medical evidence which establishes Miner's death was caused by clinical or legal pneumoconiosis.

Decision and Order at 67.

Claimant's brief does not raise any specific allegations of error regarding the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Moreover, the administrative law judge acted within his discretion in discrediting the opinions of Drs. Iosif[16] and Perper[17] because he found that their respective opinions were not

[16]Dr. Iosif completed the miner's death certificate. Dr. Iosif attributed the miner's death to respiratory failure due to emphysema and pneumonia. Director's Exhibit 152. However, in a subsequent letter dated July 16, 2003, Dr. Iosif opined that the miner's coal workers' pneumoconiosis "certainly contributed….to his eventual death." Claimant's Exhibit 1. Dr. Iosif provided no basis for his opinion regarding the contribution of pneumoconiosis to the miner's death.

[17]In a report dated February 3, 2001, Dr. Perper opined that the miner's coal workers' pneumoconiosis was a substantial contributory cause of his death, both directly and indirectly, through the associated centrilobular emphysema and the terminal bronchopneumonia that resulted in fatal hypoxemia and in respiratory death. Director's Exhibit 154. Dr. Perper, however, failed to explain the basis for his opinion regarding the cause of the miner's death.

sufficiently reasoned. *See Clark, supra*; *Lucostic, supra*; Decision and Order at 62-63. There is no other medical opinion evidence of record that supports a finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).[18] Consequently, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).[19] In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), we affirm the administrative law judge's denial of benefits in the survivor's claim.

In light of our affirmance of the administrative law judge's denial of benefits in the miner's and survivor's claims on the merits, we need not address employer's contention that the administrative law judge erred in designating it as the responsible operator.[20] *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

---

[18]Dr. Tomashefski opined that the miner's mild simple coal workers' pneumoconiosis did not cause or contribute to his severe emphysema, which was the underlying cause of his death. Director's Exhibit 154. Dr. Naeye opined that the miner's coal workers' pneumoconiosis had no role in his death. Director's Exhibit 172. Dr. Tuteur opined that the miner's pneumoconiosis was of such a low severity and profusion that it did not contribute to, cause, or even hasten the miner's death. Employer's Exhibit 2. Dr. McSharry opined that the miner's pneumoconiosis did not hasten or significantly contribute to his death. Employer's Exhibit 3. Dr. Castle opined that the miner's death was neither caused by, contributed to, nor hastened by his simple coal workers' pneumoconiosis. Employer's Exhibit 4.

[19]In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish the existence of complicated pneumoconiosis, claimant is not entitled to the presumption set out at 20 C.F.R. §718.304.

[20]Claimant also contends that the administrative law judge erred in crediting the miner with only 8.97 years of coal mine employment. Claimant asserts that Judge Miller's previous finding of eleven years of coal mine employment was supported by substantial evidence and should stand. Claimant, however, does not contend that the administrative law judge's findings pursuant to 20 C.F.R. §§718.204(c), 718.205(c) and 718.304 were affected by his finding regarding the length of the miner's coal mine employment. Consequently, we need not address claimant's contention of error regarding the administrative law judge's length of coal mine employment finding. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge