

BRB No. 98-1290 BLA

SHELIA G. MULLINS)	
(Widow of KENNETH C. MULLINS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
WESTMORELAND 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 Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Shelia G. Mullins, Big Stone Gap, Virginia, *pro se*.¹

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

¹Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision. In a letter dated June 30, 1998, the Board stated that claimant would be considered to be representing himself on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Claimant,² without the assistance of counsel, appeals the Decision and Order (97-BLA-1798) of Administrative Law Judge Richard T. Stansell-Gamm 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 twenty-five years of coal mine employment and adjudicated this survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal 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).

²Claimant is the widow of the miner, Kenneth C. Mullins, who died on October 16, 1995. Director's Exhibits 1, 7. The miner filed his initial claim on March 31, 1980. Director's Exhibit 52. This claim was denied by the Department of Labor (DOL) on February 13, 1981. *Id.* Inasmuch as the miner did not pursue this claim any further, the denial became final. The miner filed another claim on March 27, 1995, which was denied by the DOL on August 29, 1995. Director's Exhibit 53. Because the miner did not pursue this claim any further, the denial became final. Claimant filed her survivor's claim on March 14, 1997. Director's Exhibit 1.

In a survivor's claim filed after January 1, 1982, a claimant must establish the existence of pneumoconiosis under any of the methods available at 20 C.F.R. §718.202(a)(1)-(4) before establishing death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). Initially, we hold that the administrative law judge properly found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), inasmuch as each of the nineteen x-ray interpretations of record is negative for the existence of pneumoconiosis.³ Director's Exhibits 10, 15, 24, 27, 28, 30-35, 37, 38, 40, 41, 51-53; Employer's Exhibits 1, 3. Next, since there is no autopsy or biopsy evidence of record which demonstrates the presence of pneumoconiosis, we hold that substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2). The administrative law judge considered the biopsy reports of Drs. Gale, London and Strickland, and correctly stated that "[a]lthough the biopsy evidence helped isolate the location of the malignant cancer cells, the various studies did not produce any evidence of black lung disease." Decision and Order at 10; Director's Exhibits 16, 51. Moreover, the record does not contain any autopsy evidence.

In addition, the administrative law judge properly determined that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(3) since none of the presumptions set forth therein is applicable to the instant claim. See 20 C.F.R. §§718.304, 718.305, 718.306. The presumption at 20 C.F.R. §718.304 is inapplicable because there is no evidence of complicated pneumoconiosis in the record. Similarly, claimant is not entitled to the presumption at 20 C.F.R. §718.305 because she filed her survivor's claim after January 1, 1982. See 20 C.F.R. §718.305(e); Director's Exhibit 1. Lastly, the miner did not die on or before March 1, 1978; therefore, the presumption at 20 C.F.R. §718.306 is also

³The administrative law judge accurately stated that "there is no radiographic evidence of pneumoconiosis." Decision and Order at 9. The administrative law judge also accurately stated that "the more detailed CT scans of [the miner's] chest failed to disclose any sign of pneumoconiosis." *Id.*; Director's Exhibits 26, 29, 36, 39, 51; Employer's Exhibits 1, 2.

inapplicable.

Finally, in determining whether claimant established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), the administrative law judge considered the relevant medical opinions of Drs. Fino, Jarboe and Paranthaman.⁴ The administrative law judge stated, “Other than Dr. Paranthaman in his initial 1980 evaluation, no other doctor who treated [the miner] or reviewed his medical record indicated [that the miner] had pneumoconiosis.” Decision and Order at 15. Drs. Fino and Jarboe opined that the miner did not suffer from coal workers’ pneumoconiosis. Employer’s Exhibits 3, 4. Although Dr. Paranthaman, in a report dated December 5, 1980, opined that the miner’s chronic bronchitis might be related to dust exposure/smoking, Director’s Exhibit 52, Dr. Paranthaman, in a subsequent report dated April 20, 1995, opined that the miner’s restrictive lung disease was unrelated to coal mine employment, Director’s Exhibit 53. The administrative law judge properly discredited Dr. Paranthaman’s 1980 medical opinion because he found it to be equivocal.⁵ See *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). In addition, the administrative law judge properly discredited Dr. Paranthaman’s 1980 medical opinion because he found it to be not well reasoned.⁶ See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Thus, since the administrative law judge, within a proper exercise of his discretion, discredited the only medical opinion of record that could establish the existence of pneumoconiosis, we hold that substantial evidence supports the administrative law judge’s finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

⁴The administrative law judge stated that “the record contains an extensive medical history of [the miner’s] long battle with lung cancer.” Decision and Order at 10.

⁵The administrative law judge stated that Dr. Paranthaman’s “use of the term ‘might’ renders his opinion equivocal.” Decision and Order at 15. Moreover, the administrative law judge stated that Dr. Paranthaman “makes no definite statement that the bronchitis is linked to coal dust exposure.” *Id.*

⁶The administrative law judge stated that “Dr. Paranthaman’s opinion is not well reasoned because he provided no explanation of how he reached the conclusion that the bronchitis and coal dust were linked together.” Decision and Order at 15.

Hence, in view of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an essential element of a survivor's entitlement under 20 C.F.R. Part 718, see *Trumbo, supra*; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986), we affirm the administrative law judge's denial of benefits.

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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge