

BRB No. 01-0559 BLA

GERALDINE LOWE)	
(Widow of ELMER LOWE))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Cynthia F. Mulliken, Pikeville, Kentucky, for claimant.

Rita Roppolo (Eugene Scalia, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (2000-BLA-00831) of Administrative Law Judge Daniel J. Roketenetz 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).¹ Based on the date of filing, the administrative law judge

¹The 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, 725 and 726 (2001).

adjudicated this claim pursuant to 20 C.F.R Part 718.² The administrative law judge found,

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CVO3086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

²Claimant is Geraldine Lowe, the surviving spouse of the miner, Elmer Lowe, who

and the Director, Office of Workers' Compensation Programs (the Director), stipulated to twenty-six years of coal mine employment. On the merits, the administrative law judge found the evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a)(1),(4), 718.203(b) (2000), but insufficient to demonstrate that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205 (2000). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge findings pursuant to Section 718.205 (2000). The Director responds urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence.³

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

died on October 21, 1999. Director's Exhibit 10. Claimant filed the instant survivor's claim on November 15, 1999, which was denied by the district director on March 1, 1999, due to claimant's failure to establish any required element of entitlement. Director's Exhibits 1, 14.

³We affirm the findings of the administrative law judge on the length of coal mine employment, and at 20 C.F.R. §§718.202(a)(1),(4), and 718.203(b), as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In order to establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(a) (2001). In a survivor's claim filed after January 1, 1982, death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death; if pneumoconiosis was a substantially contributing cause or factor leading to the miner's death; if death was caused by complications of pneumoconiosis; or if the presumption set forth at 20 C.F.R. §718.304 is applicable. See 20 C.F.R. §§718.205(c)(1)-(3) (2001). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5) (2001).⁴

⁴Since the miner's last coal mine employment took place in the Commonwealth of Kentucky, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. Director's Exhibit 2; see *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

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. Pursuant to Section 718.205(c) (2001), claimant contends that the administrative law judge erred by failing to credit the death certificate, signed by Dr. Tannir, the miner's treating physician, as establishing that pneumoconiosis substantially contributed to the miner's death. We reject claimant's contention. The administrative law judge considered the miner's death certificate, the only evidence in the record which addressed the cause of the miner's death, and rationally found that since "the record does not contain any reports or statements by Dr. Tannir in support of his findings on the death certificate, I find his findings equivocal and the death certificate entitled to little weight in this case."⁵ Decision and Order at 9; Director's Exhibit 10. The administrative law judge rationally determined that the death certificate in this case was not documented and reasoned due to Dr. Tannir's failure to provide any documentation or rationale for his conclusion. *Tennessee Consolidation Coal Co. v. Crisp*, 866 F.2d 179, 12 BLR 2-121 (6th Cir. 1989); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

We also reject claimant's contention that the administrative law judge erred by failing to accord Dr. Tannir's death certificate determinative weight based on his status as the miner's treating physician. Contrary to claimant's contention, the administrative law judge is not required to accord greater weight to the opinion of a physician based solely on his status as the miner's treating physician. Rather, this is one factor which may be considered in the administrative law judge's weighing of the medical evidence. *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989).⁶ We further reject

⁵The miner's death certificate indicates that the miner's immediate cause of death was "chronic lymphocytic leukemia" and also indicates a nearly illegible secondary cause of death which claimant asserts and the administrative law judge found, was a diagnosis of pneumoconiosis, and which the Director and the district director interpreted as a diagnosis of pneumonia. Director's Exhibits 10, 14. This difference of interpretation is immaterial however, in light of the administrative law judge's affirmable finding that this document was neither documented nor reasoned. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

⁶We further reject claimant's contention that the provisions of 20 C.F.R. §718.104(d) (2001) require that the administrative law judge credit the October 1999 opinion of Dr. Tannir, the miner's treating physician, since this section applies only to evidence produced after January 19, 2001, and does not eliminate the administrative law judge's obligation to consider the credibility of a medical report in light of its underlying documentation and reasoning. We also reject claimant's assertion that the provisions of

claimant's assertion that the instant case should be remanded in order to permit the introduction of Dr. Tannir's medical records, as it was claimant's affirmative burden to introduce evidence establishing the requisite elements of entitlement herein. *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994). Thus, the administrative law judge rationally found that claimant failed to satisfy her burden of proof to establish that the miner's death was caused, or hastened by coal workers' pneumoconiosis. *See Ondecko, 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 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Inasmuch as the administrative law judge's determination is supported by substantial evidence, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) (2001), and the denial of survivor's benefits.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

20 C.F.R. §718.201(c) (2001) regarding the definition of pneumoconiosis are supportive of claimant's burden of proof at Section 718.205(c) (2001), since claimant successfully established that the miner suffered from pneumoconiosis. Moreover, we find no merit in claimant's contention that she is entitled to a presumption of death due to pneumoconiosis pursuant to Section 718.205(d) (2001), as it is claimant's burden to establish every element necessary for entitlement. *Ondecko, supra*.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge