

BRB No. 01-0752 BLA

VIRGINIA L. BOWEN)	
(Widow of JAMES M. BOWEN))	
)	
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 - Denying Benefits of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Virginia L. Bowen, Duffield, Virginia, *pro se*.

Kathy L. Snyder (Jackson & Kelly, PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant,¹ the miner's widow, appeals the Decision and Order - Denying Benefits (00-BLA-811) of Administrative Law Judge Mollie W. Neal rendered on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of

¹ Ron Carson, a benefits counselor with Stone Mountain Health Services in St. Charles Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson, is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking*, 19 BLR 1-88 (1985)(Order).

1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).² The administrative law judge found over ten years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.³ The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a)(2) and 718.203(b), but insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c).

On appeal, claimant contends that she is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. Employer also contends that the new regulations could affect the outcome of this case and that retroactive application of the new regulations is contrary to applicable law and denies the parties due process, but contends that, if the Board affirms the denial, remand for the development of evidence under the new regulations will be unnecessary. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal on the merits, but contends that the new regulations will not affect the outcome of this case.

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, claimant must establish that the miner

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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³ The miner died on January 25, 1999. The widow filed her survivor's claim on May 25, 1999. Director's Exhibits 1, 4.

suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *see 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). For survivor's claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). 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); *see Shuff v. Cedar Coal Co.*, 969 F.2d 977-80, 16 BLR 2-90, 2-92-93 (4th Cir. 1992), cert denied, 506 U.S. 1050 (1993).

After consideration of the administrative of law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the administrative law's Decision and Order is supported by substantial evidence and contains no reversible error. *See Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The evidence relevant to cause of death consists of the following: the opinions of Drs. Dahhan and Loudon finding the existence of pneumoconiosis based on biopsy, but concluding that pneumoconiosis did not cause or hasten death, Director's Exhibits 28, 38; Employer's Exhibits 2, 3; the opinion of Dr. Paranthaman finding the existence of pneumoconiosis based on biopsy, but concluding that death was "unlikely" to be related to the mild pneumoconiosis, Director's Exhibit 38; Employer's Exhibit 7; the biopsy report by Dr. Adelson diagnosing the existence of simple pneumoconiosis and other related conditions, Director's Exhibit 5; the opinion of Dr. Naeye that the miner's mild simple pneumoconiosis did not contribute to his death and that his death was due to his cardiac condition, Director's Exhibit 6, Employer's Exhibit 9; the opinion of Dr. Caffrey finding a minimal degree of pneumoconiosis, which did not cause or hasten death, but that coronary artery disease led to death, Employer's Exhibit 9; the opinion of Dr. Bush diagnosing mild simple pneumoconiosis that did not cause or hasten death, Director's Exhibits 34, 37; the opinions of Drs. Oesterling and Castle finding mild simple pneumoconiosis that did not cause or hasten death, Employer's Exhibits 5, 8; and the opinion of Dr. Crouch finding that mild simple coal workers' pneumoconiosis could not have contributed to or otherwise hastened the miner's death, which was most likely due to sudden cardiac event, Employer's Exhibit 1. Only two physicians of record concluded that the miner's death was related to his pneumoconiosis, *i.e.*, Dr. Kiser, the miner's treating physician since 1984, completed the death certificate which listed the cause of death as cardiorespiratory arrest due to coal workers' pneumoconiosis, and, in a subsequent letter to claimant's lay representative, dated December 21, 1999, requested that biopsy evidence of pneumoconiosis be "taken into consideration," Director's Exhibits 4, 25; and Dr. Ford, who, in a letter to claimant's attorney, dated April 2000, stated that he had participated in the autopsy and that the autopsy results established the existence of pneumoconiosis and that the

miner “died as at least a partial result of his involvement with coal mining work and Coal Workers’ Pneumoconiosis.” Director’s Exhibit 35.

In considering this evidence, the administrative law judge accorded little weight to the opinion of Dr. Kiser because Dr. Kiser did not mention black lung disease prior to completing the miner’s death certificate, *i.e.*, in any of the few treatment notes made while the miner was still living, and failed to explain his conclusion on the death certificate that the miner’s death was related to black lung. This was rational. Decision and Order at 11; *see Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, BLR (4th Cir. 2000); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Dillon v. Peabody Coal Co.*, 1-113 (1988). Further, the administrative law judge found that neither Dr. Kiser, who noted that biopsy evidence of pneumoconiosis should be “taken into consideration” in his letter to claimant’s lay representative, but provided no opinion as to whether the miner’s death was caused or hastened by pneumoconiosis, Decision and Order at 11, nor Dr. Ford provided any explanation or documentation for their conclusions. *Clark, supra*; *Fields, supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge also noted that the record contained no documentation to support these physicians’ purported familiarity with the miner’s respiratory condition during his lifetime. Decision and Order at 11. Finally, the administrative law judge accorded greater weight to the contrary opinions of record, *i.e.*, opinions by Drs. Dahhan, Loudon, Parathman, Adelson, Naeye, Bush, Oesterling and Castle as he found them better reasoned and because of the physicians’ superior qualifications.⁴ This was rational. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir.); *Clark, supra*; *Dillon, supra*; *Fields, supra*. We, therefore, affirm the administrative law judge’s finding that the evidence is insufficient to establish that pneumoconiosis hastened the miner’s death pursuant to Section 718.205(c). *Shuff, supra*; *Dillon, supra*; *Fields, 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 was insufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner’s death. *See Shuff, supra*; *Trumbo, supra*; *see also Director, OWCP v. Greenwich*

⁴ Drs. Oesterling, Crouch, Caffrey and Bush are board-certified pathologists. Employer’s Exhibits 1, 5, 8, 9; Director’s Exhibits 34, 37. Drs. Dahhan, Fino, Paranthaman and Castle are board certified pulmonary specialists. Director’s Exhibits 28, 38; Employer’s Exhibits 2, 3, 7.

Collieries, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP [Ondecko]*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

Accordingly, the administrative law judge's Decision and Order - Denying Benefits on this survivor's claim is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge