

BRB No. 10-0366 BLA

MARSHA L. JONES)	
(Widow of GEORGE JONES))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
FREEMAN UNITED COAL MINING)	DATE ISSUED: 03/15/2011
COMPANY)	
)	
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 Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Marsha L. Jones, Sesser, Illinois, *pro se*.

John A. Washburn (Gould & Ratner LLP), Chicago, Illinois, for employer.

Helen H. Cox (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order Denying Benefits (2008-BLA-05711) of Administrative Law Judge Jeffrey Tureck (the administrative law judge) rendered on a survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§910-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l))(the Act).² The administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718, based on the filing date of March 1, 2004.³ Director's Exhibit 2. The administrative law judge found that claimant established that a mistake in a determination of fact was made in the previous denial of the claim, because the evidence established the existence of simple pneumoconiosis. *See* 20 C.F.R. §718.202(a)(2) and (4). The administrative law judge, therefore, found that claimant met her initial burden on modification pursuant to 20 C.F.R. §725.310(a). Turning to the merits of the claim, however, the administrative law judge found that the evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contests the denial of benefits, challenging the administrative law judge's evaluation of the medical evidence, and asserting that she was denied due process. Further, claimant specifically contends that the administrative law judge ignored pathology slides, that the doctors' depositions were a "sham," and that she was not present at the depositions. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief on the merits of this appeal.⁴

¹ Claimant is the widow of the miner, who died on August 18, 2001. Decision and Order at 2; Employer's Exhibit 7.

² As the Director, Office of Worker's Compensation Programs, correctly asserts, the recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, do not apply to the instant case, as it was filed before January 1, 2005. Director's Exhibit 2.

³ Claimant filed a claim for survivor's benefits on March 1, 2004. Director's Exhibit 2. On July 26, 2007, the claim was denied for failure to establish any of the elements of entitlement. *Id.* at 45. Thereafter, claimant filed a timely request for modification. *Id.* at 56.

⁴ The administrative law judge's finding that the miner worked for twenty-six years in coal mine employment is affirmed, as it is unchallenged by employer and it is not adverse to claimant. Decision and Order at 2; *see Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence and in accordance with applicable law.⁵ 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. 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. §718.205(c).⁶ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v.*

⁵ The record indicates that the miner's coal mine employment occurred in Illinois. Director's Exhibits 3, 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

⁶ 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).

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 Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992).⁷

Modification may be based upon a finding of a mistake in a determination of fact pursuant to 20 C.F.R. §725.310. In reviewing the record as a whole on modification, an administrative law judge is authorized "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971); *see also Old Ben Coal Co. v. Director, OWCP [Hilliard]*, 292 F.3d 533, 22 BLR 2-429 (7th Cir. 2002).

In this case, the administrative law judge found that pneumoconiosis was established by the opinions of Drs. Askin and Repsher, diagnosing coal workers' pneumoconiosis, which were based on Dr. Askin's pathology report. The administrative law judge, therefore, determined that a mistake in a determination of fact was made in the prior decision when Administrative Law Judge William S. Colwell found that the miner did not have pneumoconiosis. 20 C.F.R. §725.301(a); Decision and Order at 3; Director's Exhibit 45; Employer's Exhibits 1, 2, 20. Because the administrative law judge's finding on modification is not contested by employer, and is in claimant's favor, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Next, because claimant is representing herself on appeal, we will address her specific arguments, and also determine whether substantial evidence supports the administrative law judge's finding that the evidence failed to establish that the miner's death was due to pneumoconiosis. Specifically, claimant asserts that the administrative law judge erred in relying on the opinions of Drs. Askin and Repsher because they did not consider all of the relevant evidence.

At the formal hearing on March 26, 2009, the administrative law judge admitted all of claimant's evidence, except for documents that were already of record, or documents that he found were not items of evidence, such as the Employer's Pre-Hearing

⁷ Because there is no evidence of complicated pneumoconiosis in the record, the presumption at 20 C.F.R. §718.304 is inapplicable. *See* 20 C.F.R. §718.304. The presumption at 20 C.F.R. §718.305 is inapplicable because the miner filed his claim after January 1, 1982. *See* 20 C.F.R. §718.305(e). Finally, the presumption at 20 C.F.R. §718.306 only applies to survivor's claims filed prior to June 30, 1982. *See* 20 C.F.R. §718.306.

report.⁸ Hearing Transcript at 17-18, 20, 33. The record was held open for the submission of additional evidence and briefs. *Id.* at 31, 33; *see* Order Closing Record [as of June 19, 2009], 2008-BLA-05711 (May 26, 2009)(unpub. Order). Thereafter, the administrative law judge accepted the March 30, 2009 report and the May 5, 2009 deposition of Dr. Parks, and the June 9, 2009 report of Dr. Repsher, offered in rebuttal of Dr. Parks's opinion. Decision and Order at 1-2; Claimant's Exhibit 2; Employer's Exhibits 19, 20. The administrative law judge overruled claimant's objection to Dr. Repsher's June 9, 2009 report because he determined that claimant's objections "go to its probative value rather than its admissibility." Decision and Order at 2; Claimant's Letter of June 16, 2009. Further, based on the administrative law judge's review of the evidence attached to claimant's cover letters of March 31, 2009, May 26, 2009, and June 16, 2009, the administrative law judge admitted Dr. Sanjabi's letter of May 19, 2009,⁹ but found that the remainder of the attached items were "either ... duplicates of exhibits already admitted into evidence or ... irrelevant." Decision and Order at 2; Claimant's Exhibit 3.

Based on the foregoing, we conclude that the record does not support claimant's procedural or due process contentions. The record reflects that the autopsy evidence, including Dr. Askin's autopsy review, was admitted into the hearing record at the May 2,

⁸ The record reflects that the parties experienced difficulty in retrieving the autopsy slides that had been sent to the Department of Defense for evaluation in the miner's Agent Orange claim. *See* Director's Exhibits 9 at 10, 18, 17. By the time of the previous administrative hearing held on May 2, 2006, at which claimant was represented by counsel, however, the matter had apparently been resolved. *See* Director's Exhibit 43 at 14.

⁹ In his letter of May 19, 2009, Dr. Sanjabi stated that he diagnosed the miner with pneumoconiosis in March, 1992. Based on the miner's death certificate and materials from the Defense Pathology Laboratory given to him by claimant, he concluded:

The question you posed was whether or not his condition will contribute to his general well-being and since Mr. Jones had suffered from hypertrophic obstructive cardiomyopathy and had a difficult cardiac condition at this time, the pulmonary condition could have an additional burden and contribute to his deterioration of his physiological and pathological condition. This is the extent that I can comment on the data that you have provided for me...."

Claimant's Exhibit 3.

2006 and the March 26, 2009 administrative hearings.¹⁰ Director's Exhibit 43 at 8-9; Hearing Transcript at 17; *see* Employer's Exhibits 6 at 3 and 4, 17. Moreover, the fact that some of the autopsy slides were submitted to the Armed Forces Institute of Pathology (AFIP) in support of the miner's Agent Orange/asbestosis claims, or that they may have been differently evaluated by physicians in those claims does not demonstrate that the autopsy materials considered in the instant case were either fraudulent or improperly admitted. Therefore, claimant's allegation that Dr. Askin considered evidence that was not of record in the miner's AFIP case is irrelevant. Moreover, notwithstanding the fact that the AFIP report was admitted at claimant's request, the administrative law judge rationally determined that it did not address whether the miner died from coal workers' pneumoconiosis, but concerned issues of asbestosis and Agent Orange exposure. Hearing Transcript at 19-23.

The record reflects that the administrative law judge fully inquired into the evidentiary issues at the hearing, consistent with his broad authority to conduct hearings, resolve procedural issues, and compile the hearing record. *Id.* at 14-21; *see Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47 (2004)(*en banc*); *Shapell v. Director, OWCP*, 7 BLR 1-304 (1984). In sum, the record does not reflect that admission of the autopsy report was improper, denied claimant due process, or detrimentally affected the administrative law judge's consideration of the medical opinion evidence in this claim. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989)(*en banc*). We decline, therefore, to further address claimant's specific argument that the opinion of Dr. Askin should have been disallowed for the above reasons. Additionally, since claimant was represented by counsel at the depositions for which transcripts are in evidence, the administrative law judge rationally rejected her assertion that she was denied due process because she was not present at the depositions. *See* Hearing Transcript at 23-24.

We also reject claimant's objection to the administrative law judge's admission of Dr. Repsher's report of June 9, 2009, *see* Claimant's Letter of June 16, 2009; Petition for Review at 1, as substantial evidence supports his characterization of claimant's objection to its admission. *See Dempsey*, 23 BLR at 1-47; *Clark*, 12 BLR at 1-153; *Morgan v. Director, OWCP*, 8 BLR 1-491, 1-493 (1986). Moreover, a party seeking to overturn an administrative law judge's disposition of an evidentiary issue must prove that the administrative law judge's action represented an abuse of his or her discretion. *See Harris v. Old Ben Coal Co.*, 23 BLR 1-98 (2006)(*en banc*)(McGranery and Hall, JJ., concurring and dissenting on other grounds), *aff'd on recon.*, 24 BLR 1-13 (2007)(*en banc*)(McGranery and Hall, JJ., concurring and dissenting on other grounds); *Hess v.*

¹⁰ Dr. Askin is Board-certified in Pathology and is a Professor of Pathology and the Director of Surgical Pathology at the Johns Hopkins Medical Institution. He has authored or co-authored over 150 peer-reviewed journal articles, many dealing with the pathology of the lung. Employer's Exhibit 2.

Clinchfield Coal Co., 7 BLR 1-295 (1984). Claimant has not met this burden here. The admission of Dr. Repsher's June 9, 2009 report is, therefore, affirmed.

As the remainder of claimant's specific arguments challenge the administrative law judge's evaluation of the medical evidence, we turn our attention to the administrative law judge's findings pursuant to 20 C.F.R. §718.205. The administrative law judge acted within his discretion in discrediting the miner's death certificate because the coroner, Mr. Leek, is not a physician, and lacks the expertise to determine the cause of the miner's death.¹¹ Specifically, the administrative law judge rationally found that Mr. Leek, a chiropractor, lacks the expertise to determine the cause of the miner's death, and has no independent opinion regarding the cause of the miner's death. Decision and Order at 4. Substantial evidence supports these findings, and they are affirmed. Director's Exhibit 8; Employer's Exhibit 18 at 6, 18, 21-24; see *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Copley v. Olga Coal Co.*, 6 BLR 1-181 (1983).

Next, the administrative law judge considered the autopsy report and the deposition testimony of Dr. Gabrawy, a Board-certified pathologist. Decision and Order at 3; Employer's Exhibits 6, 17. The administrative law judge characterized the autopsy report¹² as "very terse," and found that Dr. Gabrawy's testimony, except for his view that the miner had anthracosilicosis, was "very confused," and also noted that it was "difficult to tell what Dr. Gabrawy believed the autopsy showed." Decision and Order at 3.

With respect to the cause of death, Dr. Gabrawy testified that his autopsy of the miner was limited to the lungs, and that he could not, therefore, render a conclusion

¹¹ Mr. Stephen Leek, a county coroner, completed the miner's death certificate, and listed the immediate cause of death as "[Myocardial Infarction], due to, or as a consequence of 'Atelectasis with Pulmonary Congestion' due to, or as a consequence of 'Anthrasilicosis (Black Lung).'" Director's Exhibit 8. On deposition, Mr. Leek testified that he relied on Dr. Gabrawy's autopsy report for listing anthracosilicosis [sic] and affirmed that he has no independent knowledge pathologically, nor did he arrive at his own conclusions by examining the body, and that he relied on Dr. Gabrawy's report and his conversations with Dr. Gabrawy and the medical staff for listing the diagnoses. Employer's Exhibit 18 at 18-19, 24. Mr. Leek stated that he has no instructional or educational or professional capacity to make a medical diagnosis himself. *Id.* at 24.

¹² The autopsy stated: "Microscopic description: Lungs: Sections display marked autolysis, congestion and anthracosilicotic pigment deposits of a mild to moderate degree. Multiple sections display ossification of subpleural pulmonary parenchymal tissue. Atelectasis and hemosiderin deposits are also noted. Brown globular deposits are also seen." Employer's Exhibit 6 at 2.

regarding the cause of the miner's death.¹³ Decision and Order at 4; Employer's Exhibit 17 at 55, 66. Specifically, Dr. Gabrawy stated that, to give an "honest study and a good report... to give a complete view, a complete study and get all the information needed," a complete autopsy must be performed, including examining the chest organs, namely the heart and the lungs." *Id.* at 13-15. Dr. Gabrawy acknowledged that, because of the limited nature of his autopsy, he could not render an opinion as to whether or not coal workers' pneumoconiosis contributed to the miner's death.¹⁴ *Id.* at 58-59, 66, 70. Because a medical opinion must be reasoned to be credible, *see Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR at 2-121 (7th Cir. 1992), and must contain adequate reasoning and documentation in support of a relevant diagnosis, the administrative law judge's rejection of Dr. Gabrawy's medical opinion is affirmed. *See Peabody Coal Co. v. Benefits Review Board [Wells]*, 560 F.2d 797, 1 BLR 2-133 (7th Cir. 1977); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986).

Additionally, the administrative law judge rationally found that the reports of Drs. Rizk, Bleyer, Bjerregaard and Argarwal were not probative on the cause of the miner's death because they were written before the miner's death. Decision and Order at 4; Director's Exhibit 9 at 11; Employer's Exhibits 10, 11, 15; *see Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986). Further, the administrative law judge rationally found Dr. Sanjabi's letter to be ambiguous, and therefore, not entitled to any weight. Decision and Order at 4 n.5; Claimant's Exhibit 3; *see Justice v. Island Creek Coal Co.*, 11 BLR 1-91

¹³ Dr. Gabrawy stated that the autopsy was limited in scope, "allowing lungs only in this case. ...the family said lungs only and do not touch the heart," and allowed tissue samples to be taken for an Agent Orange claim. Employer's Exhibit 17 at 12-13, 22.

¹⁴ Dr. Gabrawy was asked:

Q. Did you conclude your opinions about the cause of [the miner's] death on the final diagnosis?

A. No, because it wasn't the complete autopsy. My final diagnosis here refers to the findings of the lungs, which I was asked to examine, plus, of course, the obesity.

Q. So it's not a cause of death; you're just reporting your findings on what you were asked to examine.

A. I believe so, yes, sir.

Hearing Transcript at 55-56.

(1988); *Hopton v. U. S. Steel Corp.*, 7 BLR 1-12 (1984). Substantial evidence supports these findings and they are, therefore, affirmed.

The administrative law judge also considered the letter and deposition of Dr. Parks, a family practitioner. Decision and Order at 4; Employer's Exhibit 19 at 4. Dr. Parks opined that, based on his treatment of the miner on "several" occasions, and the miner's death certificate, "black lung" contributed to the miner's heart disease and was a contributing factor in his death. Claimant's Exhibit 2.

However, the administrative law judge noted that, at his deposition of May 5, 2009, Dr. Parks acknowledged that his treatment notes did not mention "black lung," that he never treated the miner for "black lung" or any pulmonary problems, and that he had no specialized training in treating "black lung" patients. Decision and Order at 4; Employer's Exhibit 19 at 3-6, 10, 12, 18-19. Rather, the administrative law judge noted that Dr. Parks stated that he treated the miner for sleep apnea, cardiomyopathy, Agent Orange exposure, cardiac arrhythmia called ventricular tachycardia and subaortic stenosis. *Id.* at 4-6, 10. Further, the administrative law judge observed that it was apparent from Dr. Parks deposition testimony that claimant had indicated to him that it would help her "black lung" benefits claim if the family doctor would say that the miner's cause of death was contributed to, at least in part, by black lung. *Id.* at 11-12. The doctor recounted that claimant showed him "an old report from Dr. Sanjabi...that suggested that the patient had coal workers' pneumoconiosis." *Id.* at 12. Dr. Parks concluded, therefore, that because the miner's 1999 echocardiogram showed pulmonary hypertension, and the miner died from a cardiogenic event, "there at least must be some cause and effect." *Id.* at 12-13, 18. However, Dr. Parks stated that, although pulmonary hypertension can be a contributing factor with cardiac death, he did not know if that happened in this case. *Id.* at 18. Additionally, Dr. Parks stated that he had no independent knowledge of the miner's "sudden cardiac death," and could offer no authority for his opinion that pulmonary hypertension could be due to black lung disease, or that any of the miner's health conditions of aortic insufficiency, atrial enlargement, regurgitation, hypertension and hypertrophy could be contributed to, or caused, by black lung disease. *Id.* at 13, 14-17.

Based on the foregoing, the administrative law judge found that Dr. Parks "did not even know whether the miner had pneumoconiosis" and never treated him for pneumoconiosis or any other pulmonary condition. Decision and Order at 4. He concluded further that "Dr. Parks has absolutely no basis to conclude that pneumoconiosis contributed in any way to the miner's death," and that his letter of March 30, 2009 is a "sham" written at claimant's direction. *Id.* The reliability of treating physicians' opinions must be considered in according weight to a medical opinion. *See generally Ziegler Coal Co. v. Director, OWCP [Griskell]*, 490 F.3d 609, 24 BLR 2-38 (7th Cir. 2007). However, medical opinions that are not reasoned, documented, or sufficiently explained may be discounted, *Consolidation Coal Co. v. Director, OWCP*

[*Stein*], 294 F.3d 885, 22 BLR 2-409 (7th Cir. 2002); *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 22 BLR 2-311 (7th Cir. 2001); *Consolidation Coal Co. v. OWCP* [*Sisson*], 54 F.3d 434, 19 BLR 2-155 (7th Cir. 1995); *Amax Coal Co. v. Beasley*, 957 F.2d 324, 16 BLR 2-45 (7th Cir. 1992); *Amax Coal Co. v. Burns*, 855 F.2d 499 (7th Cir. 1988); *Peabody Coal Co. v. Lowis*, 708 F.2d 266, 5 BLR 2084 (7th Cir. 1983). Here, the administrative law judge rationally identified deficiencies in Dr. Parks' medical opinion, and substantial evidence supports his rejection of Dr. Parks's opinion. See *Clark*, 12 BLR at 1-155.

Next, the administrative law judge considered the opinion of Dr. Askin, that the miner's simple coal workers' pneumoconiosis was minimal, and "played no role in contributing to or hastening [his] death." Employer's Exhibit 2 at 1-2; Decision and Order at 3. The administrative law judge also properly considered the opinion of Dr. Repsher, based on his review of the medical evidence of record, that the miner's minimal coal worker's pneumoconiosis "would not have contributed to or hastened [his] death."¹⁵ Decision and Order at 4; Employer's Exhibit 1 at 4, 20. The administrative law judge rationally credited the opinion of Dr. Askin, with which Dr. Repsher concurred, that pneumoconiosis did not cause or contribute to the miner's death. Employer's Exhibits 1 at 4-5, 2 at 2, because Dr. Askin is "extraordinarily well-qualified." Decision and Order at 3; see *Amax Coal Co. v. Director, OWCP* [*Chubb*], 312 F.3d 882, 22 BLR 2-514 (7th Cir. 2002); *Zeigler Coal Co. v. Kelley*, 112 F.3d 839, 21 BLR 2-92 (7th Cir. 1997); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988).

In conclusion, the administrative law judge rationally determined that the medical opinion evidence failed to establish that the miner's death was due to pneumoconiosis. Substantial evidence supports his credibility determinations concerning the medical opinion evidence. See Decision and Order at 4; *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 24 BLR 2-97 (7th Cir. 2008); *Railey*, 972 F.2d at 183, 16 BLR at 2-128; *Clark*, 12 BLR at 1-155. The administrative law judge fully reviewed the relevant evidence of record, and provided credible reasons for assigning controlling weight to the opinions of Drs. Askin and Repsher on the issue of death causation, and has permissibly assigned less weight to the opinions of claimant's physicians. See *Peabody Coal Co. v. Hale*, 771 F.2d 246, 8 BLR 2-34 (7th Cir. 1985); *Hall v. Director, OWCP*, 12 BLR 1-80 (1988). The administrative law judge rationally exercised his discretion to evaluate conflicting medical evidence, see *Livermore v. Amax Coal Co.*, 297 F.3d 668, 22 BLR 2-399 (7th Cir. 2002), and concluded that the evidence was insufficient to establish death due to pneumoconiosis, as no credible medical opinion attributed the miner's death

¹⁵ Dr. Repsher opined that the miner died as a result of his heart disease leading to cardiac arrest, and that coal workers' pneumoconiosis did not have any significant effect on the miner's course, prior to his death, and did not cause, contribute to, or in any way hasten, his death. Employer's Exhibit 2 at 4-5.

to pneumoconiosis, and determinative weight was assigned to credible medical opinions that the miner's death was unrelated to pneumoconiosis. Substantial evidence, therefore, supports the administrative law judge's ultimate determination that the miner's death was not due to, or hastened by, pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Railey*, 972 F.2d at 183, 16 BLR at 2-128.

Contrary to claimant's arguments, the administrative law judge's assignment of controlling weight to evidence contrary to claimant's position does not demonstrate that the administrative law judge failed to adequately consider and evaluate the evidence of record, and her assertions essentially request a re-weighing of the medical evidence. We are not empowered to reweigh the evidence or substitute our inferences for those of the administrative law judge. *See Peabody Coal Co. v. Vigna*, 22 F.3d 1388, 18 BLR 2-215 (7th Cir. 1994). Claimant has the burden of establishing entitlement, and bears the risk of non-persuasion if her evidence is found insufficient to establish a crucial element of entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Because claimant has not met her burden of proof on an essential element of entitlement under 20 C.F.R. Part 718 in this survivor's claim, benefits are precluded. 20 C.F.R. §718.205(c); *see Railey*, 972 F.2d at 183, 16 BLR at 2-128; *Clark*, 12 BLR at 1-155; *Trent*, 11 BLR at 1-27. Therefore, we affirm the denial of benefits as it is supported by substantial evidence and in accordance with law. *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge