BRB No. 02-0824 BLA

ELSIE GILBERT (Widow of NOAH G. GILBERT)	)	
Claimant-Petitioner	)	
v.	)	
HARMAN MINING CORPORATION	)	DATE ISSUED:_____
and	)	
OLD REPUBLIC INSURANCE COMPANY	)	
Employer/Carrier-Respondent	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Elsie Gilbert, Vansant, Virginia, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C.

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

PER CURIAM:

Claimant, the widow of the miner, without the assistance of counsel,

appeals,[1] the Decision and Order - Denial of Benefits (01-BLA-500) of Administrative Law Judge Richard T. Stansell-Gamm 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).[2] Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.[3] The administrative law judge found that the evidence

---

[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 Co.*, 19 BLR 1-88 (1985)(Order).

[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] Claimant filed her survivor's claim for benefits on March 28, 2000, subsequent to the miner's death on January 10, 2000. Director's Exhibits 1,

was insufficient to establish the existence of pneumoconiosis, an essential element of entitlement. Accordingly, benefits were denied.

On appeal, claimant generally contends that she is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he is not participating in this appeal.

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. *Hodges v. Bethenergy Mines Inc.*, 18 BLR 1-18 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (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).

To establish entitlement to survivor's benefits, claimant must establish that the miner 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)-(4). 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 911-80, 16 BLR 2-90, 2-92-93 (4th Cir. 1992), *cert denied*, 506 U.S. 1050 (1993).

---

6. The miner's claim and subsequent requests for modification were denied numerous times for failure to establish the existence of pneumoconiosis and disability causation. *See* Director's Exhibit 31.

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. Considering x-rays taken from 1973 through 1994, the administrative law judge determined that the x-ray evidence of record was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1). The administrative law judge noted that the great weight of the x-ray evidence was interpreted as negative. Discussing the most recent x-rays of record, the administrative law judge found that while the September 11, 1991 x-ray was interpreted as positive by Dr. Robinette, it was interpreted as negative by Dr. Epling. The administrative law judge further noted that the other more recent x-rays of record were interpreted as negative for the existence of pneumoconiosis (x-rays taken June and August 1992, June 1993, and November 1994). The administrative law judge, therefore, rationally found that the x-ray evidence did not establish the existence of pneumoconiosis. Decision and Order at 7; Director's Exhibit 8; 20 C.F.R. §718.202(a)(1); *see Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *see also Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31 (4th Cir. 1997).

Pursuant to Section 718.202(a)(2), the administrative law judge permissibly accorded greater weight to Dr. Hansbarger's finding on biopsy that while the right lung contained mild, focal anthracotic pigmentation, there was no evidence of coal workers' pneumoconiosis.[4] The administrative law judge noted that this finding was further supported by the opinions of Drs. Kleinerman and Mills, who studied the right lung tissue slides, in contrast to the opinion of Dr. Modi, who stated that the pathology report was consistent with black lung disease even though he did not actually examine the right lung tissue slides. The administrative law judge noted that since the pathology report relied on by Dr. Modi showed only the presence of brown black pigmentation, Dr. Modi erred in finding that it supported a finding of pneumoconiosis pursuant to the regulations. This was proper. 20 C.F.R. §§718.202(a)(2); 718.201. Director's Exhibits 6, 31-88; Decision and Order at 8; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988)(*en banc*). In addition, the administrative law judge

[4] The miner's right lung was removed due to lung cancer on August 31, 1987. Employer's Exhibit 9.

found that the left lung tissue evidence by autopsy was also insufficient to establish the existence of pneumoconiosis as the opinions Drs. Hansbarger, Crouch, Tomashefski of no pneumoconiosis on examination of the left lung tissue outweighed the single contrary opinion of Dr. Segen. This was rational. Director's Exhibits 7, 10, 19, 21; Decision and Order at 10; *Clark*, *supra*; *Dillon*, *supra*; *Fields*, *supra*. Accordingly, we affirm the administrative law judge's finding that the biopsy and autopsy evidence was insufficient to establish the existence of pneumoconiosis.

Considering the medical opinion evidence of record at Section 718.202(a)(4), the administrative law judge accorded more weight to the opinions of Drs. Hansbarger and Castle, finding no pneumoconiosis, than to the contrary opinion of Dr. Modi, because he found them better reasoned and documented. In discussing the opinions, the administrative law judge accorded little weight to Dr. Modi's opinion because Dr. Modi failed to indicate what documentation, other than autopsy and death certificate, he relied on and because his finding of pneumoconiosis on the death certificate was conclusory. Instead, the administrative law judge accorded greater weight to the opinions of Drs. Hansbarger and Castle because Dr. Hansbarger provided a reasoned opinion for his conclusion that the miner did not have pneumoconiosis and Dr. Castle presented the best reasoned assessment by integrating all of the medical data of record. This was rational. Director's Exhibits 6, 19; Employer's Exhibit 17; *see Bill Branch v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Underwood*, 105 F.3d at 951, 21 BLR at 2-31-33 (in weighing opinions, the administrative law judge is called upon to consider their quality, taking into account, among other things, the opinion's reasoning and detail of analysis); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438 (4th Cir. 1997); *Clark*, *supra*; *Dillon*, *supra*; *Fields*, *supra*. In addition, the administrative law judge permissibly found that the opinions diagnosing the existence of pneumoconiosis, which were part of the record in the miner's claim, were outweighed by opinions finding no pneumoconiosis. *See* Decision and Order at 11; *Clark*, *supra*; *Dillon*, *supra*; *Fields*, *supra*; *Tackett*, *supra*. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) as it is supported by substantial evidence and is in accordance with law.[5]

---

[5] The evidence is insufficient to establish the existence of pneumoconiosis based on the presumptions provided pursuant to Section 718.202(a)(3) as this

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). Accordingly, since the administrative law judge rationally concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis, an essential element of entitlement, *Trumbo*, *supra*, the administrative law judge properly declined to address the issue of death due to pneumoconiosis. We must therefore affirm the administrative law judge's denial of benefits in this survivor's claim as it is supported by substantial evidence and in accordance with law.

---

is a survivor's claim filed after June 30, 1982 and there is no evidence of complicated pneumoconiosis. 20 C.F.R. §718.202(a)(3); *see* 20 C.F.R. §§718.304, 718.305, 718.306.

Accordingly, the Decision and Order - Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge