

BRB No. 97-1152 BLA

JANE LUCAS	)	
(Widow of CARL LUCAS)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
OHIO VALLEY COAL COMPANY	)	DATE ISSUED:
CORPORATION	)	
	)	
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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Jane Lucas, Powhatan Point, Ohio , *pro se*.

John C. Artz (Polito & Smock), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant, widow of the deceased miner and without the assistance of counsel, appeals the Decision and Order (96-BLA-1502) of Administrative Law Judge Michael P. Lesniak 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 found eighteen years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>1</sup> Decision and

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<sup>1</sup> The miner filed a claim for benefits on February 4, 1983, which was denied on July 29, 1983. Director's Exhibit 1. The miner filed a second claim on April 21, 1995. Director's Exhibits 1A, 26. The miner died on December 30, 1995, and the

Order at 2. The administrative law judge concluded that the evidence of record was insufficient to establish that death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). 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 would not participate 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. *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 are in accordance with law. 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).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 on a survivor's claim filed after January 1, 1982, 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, or substantially contributed to, pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205, 718.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

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claim was denied on March 29, 1996, and is no longer being pursued. Director's Exhibits 10, 32. Claimant filed her claim for benefits on February 15, 1996. Director's Exhibit 24.

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 Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The administrative law judge, in the instant case, rationally determined that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c).<sup>2</sup> *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). There are four medical opinions of record. Drs. Caffrey, Kleinerman and Lenky opined that pneumoconiosis did not contribute to or hasten the miner's death. Director's Exhibit 37; Employer's Exhibit 1; Claimant's Exhibit 1. Dr. Long opined that although olivodegeneration with respiratory failure was the chief cause of death, the underlying pneumoconiosis was still a contributing cause. Director's Exhibit 38. The death certificate and the autopsy report list the cause of death as cerebellar pontine degeneration. Director's Exhibits 26, 27. The administrative law judge permissibly accorded greater weight to the opinion of Dr. Lenky, based on his superior qualifications as a board-certified pulmonary specialist, as he actually treated the miner, and since his opinion was supported by the opinions of the reviewing pathologists Drs. Caffrey and Kleinerman. Decision and Order at 4; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-26 (1988); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). 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 denial of benefits in this survivor's claim as it is supported by substantial evidence and is in accordance with law. *Brown, supra*; *Trumbo, supra*.

Inasmuch as claimant has failed to establish that the miner's death was due to pneumoconiosis, a requisite element of entitlement for a survivor's claim pursuant to Part 718, entitlement thereunder is precluded. *Trumbo, supra*.

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

SO ORDERED.

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<sup>2</sup> The administrative law judge's failure to specifically consider 20 C.F.R. §718.205(c)(3) does not require remand as there is no evidence of complicated pneumoconiosis in the record. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1986).

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge