

BRB No. 97-1153 BLA

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

Appeal of the Decision and Order of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Marcelene Helton, Salyersville, Kentucky, *pro se*.

Gary K. Stearman (Marvin Krislov, Deputy Solicitor for National Operations; 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 the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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-139) of Administrative Law Judge Thomas F. Phalen, Jr. 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 nine and one-half 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>

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<sup>1</sup> The miner filed his claim for benefits on August 17, 1988, which was denied July 26, 1993. Employer's Exhibit 8. The miner appealed and the Board remanded the case. *Helton v. Director, OWCP*, BRB No. 93-2330 BLA (April 28,

Decision and Order at 4. The administrative law judge concluded that the evidence of record was insufficient to establish death 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. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

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'Keefe 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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1995)(unpublished). The case was denied again on February 9, 1996. Employer's Exhibit 10. The miner died on January 22, 1995. Director's Exhibit 5. Claimant filed the instant claim for benefits on February 16, 1995. Director's Exhibit 1. Claimant has not appealed the administrative law judge's denial of benefits in the miner's claim on remand and thus that decision is not before the Board.

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, permissibly 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). Dr. Branscomb opined that the miner's death was not hastened by coal dust and Dr. Fino stated that there was no evidence that death was caused or contributed to by the inhalation of coal dust. Employer's Exhibits 1, 4. An unsigned treatment record dated 1990 notes a diagnosis of chronic obstructive pulmonary disease. Director's Exhibit 7. The death certificate lists the immediate cause of death as widely metastatic bladder cancer. Director's Exhibit 5. Medical records dated from 1988 to 1994 deal with the miner's bladder problems and treatment records from Dr. Lim dated from 1991 to 1995 deal with the miner's cancer and chemotherapy. Director's Exhibit 9, Employer's Exhibits 2, 3. The administrative law judge rationally found the unsigned treatment note insufficient to establish that pneumoconiosis hastened death and accorded more weight to the opinions of Drs. Fino, Branscomb, and the death certificate, stating that coal dust did not contribute to the miner's death. Decision and Order at 9; *Brown, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-26 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's denial 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

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<sup>2</sup> The administrative law judge properly noted that claimant could not establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(1), (3) as the evidence of record establishes that the immediate cause of the miner's death was metastatic bladder cancer and there is no evidence of complicated pneumoconiosis in the record. Decision and Order at 8.

pneumoconiosis, a requisite element of entitlement for a survivor's claim pursuant to Part 718, entitlement thereunder is precluded. *Brown, supra; Trumbo, supra.*

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

SO ORDERED.

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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