

BRB No. 00-0189 BLA

VERTIE L. BELCHER)	
(Widow of CHARLES LINDY BELCHER))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ROBINSON-PHILLIPS 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 of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle and Rundle, L. C.), Pineville, West Virginia, for claimant.

John P. Scherer (File, Payne, Scherer & File), Beckley, West Virginia, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (1998-BLA-1203) of Administrative Law

¹Claimant is Vertie L. Belcher, the miner's widow. The miner, Charles Lindy Belcher, filed several claims for benefits which were denied in a Decision and Order issued by Administrative Law Judge Daniel F. Sutton on July 29, 1998. Employer's Exhibit 26. The miner died on May 9, 1997 and claimant filed the instant survivor's claim for benefits on January 15, 1998. Director's Exhibits 1, 7.

Judge Pamela Lakes Wood 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 that claimant established that the miner had nineteen years of qualifying coal mine employment, but failed to establish that the miner had pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in weighing the medical opinion evidence pursuant to Sections 718.202(a)(4) and 718.205(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, responds, declining to submit a response brief on appeal.²

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under Part 718 based 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 death was due to, or hastened by, pneumoconiosis. *See* 30 U.S.C. §901(a); 20 C.F.R. §§718.1, 718.205, 725.201; *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir., 1992); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

Claimant initially contends that the administrative law judge erred in weighing the medical opinion evidence of record regarding the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Claimant's Brief at 6-7. Drs. Ranavaya and Rasmussen opined that the miner had pneumoconiosis, and Drs. Hippensteel and Fino, opined that the miner did not have pneumoconiosis. Director's Exhibit 20; Employer's Exhibits 17, 20, 24, 25. The administrative law judge considered these opinions, along with the physicians' credentials, and acted within his discretion in finding that the evidence "is, at best, in equipoise

²We affirm the administrative law judge's findings regarding the length of the miner's coal mine employment and pursuant to 20 C.F.R. §718.202(a)(1)-(3) as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

concerning the existence of pneumoconiosis” and, thus, that claimant failed to meet her burden of establishing the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Decision and Order at 11; *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267 (1994); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). Consequently, we affirm the administrative law judge’s finding that claimant failed to establish that the miner had pneumoconiosis pursuant to Section 718.202(a)(4).

Claimant next contends that the administrative law judge erred in weighing the medical opinion evidence of record pursuant to Section 718.205(c). Claimant’s Brief at 7-10. Drs. Hippensteel and Fino, opined that the miner would have died at the same time, from the same cause even if he had never set foot in the mines. Director’s Exhibit 20. Employer’s Exhibits 17, 20, 25. Dr. Rasmussen, opined that the miner died of primary cardiac disease and stated that it “is not possible...for me to assert that the patient’s coal workers’ pneumoconiosis was a major contributing factor to his death.” Employer’s Exhibit 24. The administrative law judge properly found that, inasmuch as none of the medical opinions of record establishes that the miner’s death was due to pneumoconiosis, claimant failed to meet her burden of establishing that the miner’s death was due to pneumoconiosis pursuant to Section 718.205(c). Consequently, we affirm the administrative law judge’s determination that claimant failed to establish that the miner’s death was due to pneumoconiosis pursuant to Section 718.205 and the denial of benefits on the survivor’s claim.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge