

BRB No. 01-0132 BLA

GERALDINE HACKNEY)
(Widow of JAMES E. "PETE" HACKNEY))

Claimant-Petitioner)

v.)

MPM MINING INCORPORATED, *et al.*)

and)

OLD REPUBLIC INSURANCE CO.)
ROCKWOOD INSURANCE CO.)

Employers/Carriers-)
Respondents)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Geraldine Hackney, Grundy, Virginia, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer, Hackney Fuel Company, Incorporated.

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

PER CURIAM:

Claimant, the miner's widow and without the assistance of counsel, appeals the Decision and Order (99-BLA-983) of Administrative Law Judge Richard A. Morgan denying modification and benefits on a 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 noted that the instant claim was a request for modification and determined that Hackney Fuel Company, Incorporated was the properly designated responsible operator. Decision and Order at 2, 4. The administrative law judge found at least twenty-seven years of qualifying coal mine employment, and based on the date of filing, considered entitlement in this survivor's claim pursuant to 20 C.F.R. Part 718 (2000). Decision and Order at 3, 14. The administrative law judge, after considering all of the evidence of record, concluded that claimant failed to establish the existence of

¹Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant, 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 (1995)(Order).

²The 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 (2000). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001).

³Claimant is Geraldine Hackney, the miner's widow. Claimant filed her claim for benefits on March 15, 1994, which was finally denied by the district director on August 4, 1995 as claimant failed to establish the existence of pneumoconiosis or that the miner's death was due to pneumoconiosis. Director's Exhibits 1, 30. Claimant requested modification on April 9, 1996, which was denied on June 13, 1996. Director's Exhibits 34, 37. Claimant subsequently requested a hearing before the Office of Administrative Law Judges. Director's Exhibit 38.

pneumoconiosis or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.205 (2000). Decision and Order at 15-20. Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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). If the findings of fact and conclusions of law of the administrative law judge 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 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 survivor's benefits under 20 C.F.R. Part 718, in a claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 718.205(c), 718.304 (2000), *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). 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) (2001); *see also Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S. Ct. 969 (1993).

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. Initially, in the instant case, the administrative law judge properly considered the merits of this claim without making a preliminary determination that claimant established a change in condition or a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000), as this case involves a request for modification of a prior denial of benefits by the district director. *See Kott v. Director, OWCP*, 17 BLR 1-9 (1992); *Motichak v. Beth Energy Mines, Inc.*, 17 BLR 1-14 (1992); Director's Exhibit 30; Decision and Order at 2, 14.

With respect to the merits, the administrative law judge rationally found that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) (2000). *See Piccin v. Director, OWCP*, 6

BLR 1-616 (1983). The relevant evidence of record concerning the cause of death consists of six medical opinions and the death certificate. Dr. Thakkar, the miner's treating physician, and Dr. Abrenio, the autopsy prosector, did not indicate that coal dust exposure contributed to or hastened the miner's death. Director's Exhibits 11, 13, 34. Drs. Hippensteel, Naeye, Kleinerman and Hansbarger opined that the miner's death was not contributed to or hastened by coal workers' pneumoconiosis or any other occupational lung disease. Director's Exhibits 12, 26, 27; Employer's Exhibits 1, 3. The death certificate, signed by Dr. M.J. Thakkar, listed the cause of death as "acute hemorrhagic pancreatitis" with arteriosclerotic heart disease as a condition contributing to death. Director's Exhibit 10. The administrative law judge properly considered this evidence and rationally concluded that it was insufficient to establish claimant's burden of proof pursuant to 20 C.F.R. §718.205 (2000) as it does not indicate that the miner's death was in any way related to pneumoconiosis. *See Shuff, supra; Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Director's Exhibits 11-13, 26, 27, 34; Employer's Exhibits 1, 3; Decision and Order at 16, 18-20. 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)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205 (2000) as it is supported by substantial evidence and is in accordance with law. *See Shuff, supra; Neeley, supra; Trumbo, supra.*

Inasmuch as claimant has failed to establish that the miner's death was due to pneumoconiosis, a requisite element of entitlement in a survivor's claim pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded and we need not address the administrative law judge's findings regarding the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2000). *See Shuff, supra; Trumbo, supra; Neeley, supra.*

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

SO ORDERED.

BETTY JEAN HALL, Chief

⁴The administrative law judge properly found that the presumption at 20 C.F.R. §718.304 (2000) is not applicable in this case as the record indicates that there is no evidence of complicated pneumoconiosis contained therein. *See* 20 C.F.R. §718.205(c)(3) (2000); Decision and Order at 16.

Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge