

BRB No. 06-0410 BLA

BULA MARCUM)	
(Widow of FRANK MARCUM, JR.))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 10/27/2006
)	
ROBERT COAL COMPANY)	
)	
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

Bula Marcum, Hardy, Kentucky, *pro se*.

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

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

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order (03-BLA-06614) of Administrative Law Judge Janice K. Bullard 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 at least twenty-one years of qualifying coal mine employment. Decision and Order at 3-4. The administrative law judge determined that the evidence of record was insufficient to establish either the existence of 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. Decision and Order at 5-14. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the evidence of record is sufficient to establish entitlement to benefits. Employer responds urging affirmance of the administrative law judge's denial of benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not respond 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 Co.*, 12 BLR 1-176, 1-177 (1989). The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable 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 in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. 20 C.F.R. §718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it

¹ Claimant is Bula Marcum, the miner's widow. The miner, Frank Marcum, Jr., filed a claim for benefits on September 15, 1981, which was finally denied by the district director on January 29, 1982. Director's Exhibit 1. No further action was taken on this claim. The miner died on December 17, 2000 and claimant filed a survivor's claim, the subject of this appeal, on June 25, 2001, in which benefits were awarded by the district director on June 4, 2003. Director's Exhibits 2, 10, 32. Employer subsequently requested a hearing before the Office of Administrative Law Judges. Director's Exhibit 33.

hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).²

Pursuant to 20 C.F.R. §718.205(c), the administrative law judge adequately examined and discussed all of the relevant evidence as it relates to the cause of the miner's death and rationally determined that the evidence of record was insufficient to carry claimant's burden of proof.³ *Griffith*, 49 F.3d 184, 19 BLR 2-111; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); Decision and Order at 12-14; Director's Exhibits 10, 11, 17; Employer's Exhibits 1, 6, 8.

The relevant evidence of record concerning the cause of death consists of three medical opinions and the miner's death certificate. Dr. Rosenberg opined that the miner's death was related to cardiac dysfunction which was not caused or hastened by the past inhalation of coal mine dust exposure or the presence of coal workers' pneumoconiosis. Employer's Exhibit 1. Dr. Angco, the miner's treating and attending physician at the time of his death, opined that the miner died as a result of cardio-arrest due to complications of chronic obstructive pulmonary disease and coronary heart disease. Director's Exhibits 12, 29. Dr. Fino opined that the miner's death was due to significant coronary artery disease and valvular disease, and that coal mine dust inhalation did not cause, contribute to, or hasten his death. Employer's Exhibits 6, 8. The death certificate, signed by Dr. Angco, listed the cause of death as cardio-respiratory arrest due to end-stage cardiomyopathy due to anoxic encephalopathy due to oxygen dependent COPD and advanced coronary artery disease. Director's Exhibit 10.

The administrative law judge properly considered this evidence and permissibly found that it was insufficient to establish claimant's burden of proof pursuant to 20 C.F.R. §718.205, since she found that the opinion of Dr. Angco and the death certificate that he completed were entitled to little weight, because Dr. Angco did not offer any basis for his conclusion that COPD was a contributing cause of the miner's death. See *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-623 (6th Cir. 2003); *Fields v.*

² This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner was last employed in the coal mine industry in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibits 1, 3, 6.

³ The administrative law judge properly determined that the presumption at 20 C.F.R. §718.304 is not applicable in this case as the record contains no evidence of complicated pneumoconiosis. See 20 C.F.R. §718.205(c)(3); Decision and Order at 6, 12.

Island Creek Coal Co., 10 BLR 1-19 (1987); Decision and Order at 13-14; Director's Exhibits 10, 11, 17.

Moreover, the administrative law judge permissibly accorded greater weight to the opinions of Drs. Rosenberg and Fino in light of their superior qualifications and because the physicians offered well-reasoned and well-documented opinions that pneumoconiosis did not contribute to or hasten the miner's death.⁴ See *Clark*, 12 BLR at 1-155; Decision and Order at 13; Employer's Exhibits 1, 5-8. The administrative law judge is empowered to weigh the medical evidence and draw her own inferences, *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. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1113 (1989). Consequently, we affirm the administrative law judge's determination that the evidence of record did not establish that the miner's death was due to pneumoconiosis, as it is supported by substantial evidence and is in accordance with law. *McFall*, 12 BLR at 1-177.

Because 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 is precluded and we need not address any other finding by the administrative law judge. See 20 C.F.R. §718.205(a); *Trumbo*, 17 BLR at 1-87.

⁴ The record indicates only that Dr. Angco was the miner's treating and attending physician at the time of the miner's death. Director's Exhibits 11, 17. Dr. Rosenberg is board-certified in internal medicine, pulmonary disease, and occupational medicine. Employer's Exhibit 5. Dr. Fino is board-certified in internal medicine and pulmonary disease. Employer's Exhibit 7.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge