

BRB No. 98-1193 BLA

VERNA B. BARTON)
(Widow of CLARENCE BARTON, JR.))
)
Claimant-Petitioner)
)
v.)
)
HARMAN MINING CORPORATION)
)
Employer-Respondent)
)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED) DATE ISSUED: 10/12/99
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Verna B. Barton, Grundy, Virginia, *pro se*.

Laura Metcoff Klaus and Michael R. Finley (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH, BROWN, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel,² appeals the Decision and Order (97-

¹Claimant is Verna B. Barton, widow of Clarence Barton, Jr., the miner, who filed her claim for benefits on April 1, 1997. Director's Exhibit 1. The miner filed a claim for benefits on February 21, 1995 which was finally denied on July 27, 1995. Director's Exhibit 25.

²Ron 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).

BLA-1865) of Administrative Law Judge Edward Terhune Miller 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 credited the miner with thirty-five years of coal mine employment. Decision and Order at 3. Applying the regulations at 20 C.F.R. Part 718, the administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Decision and Order at 3. However, the administrative law judge found that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Decision and Order at 3-4. Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's Decision and Order denying benefits. Employer responds, urging affirmance, and the Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.³

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). 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 in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, the administrative law judge properly noted that this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit and correctly cited the standard pursuant to Section 718.205(c) that pneumoconiosis is a substantially contributing cause of the miner's death if it hastened his demise in any way, citing *Richardson v. Director, OWCP*, 94 F.3d 164, 21 BLR 2-373 (4th Cir. 1996) and *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993). Decision and Order at 1-2. Pursuant to Section 718.205(c), the administrative law judge found "[t]he preponderance of the medical evidence of record does not establish that

³We affirm the administrative law judge's findings regarding length of coal mine employment and pursuant to Section 718.202(a)(2) as they are not adverse to claimant and are unchallenged on appeal. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

the miner's death was due to pneumoconiosis." Decision and Order at 3. As the administrative law judge noted, Dr. Walsh, who completed the death certificate, listed aspiration due to lung cancer as the immediate cause of death and black lung disease and chronic obstructive pulmonary disease as other significant conditions contributing to death, Director's Exhibit 6, and Drs. Naeye and Hansbarger found that the miner's pneumoconiosis was too mild to have hastened the miner's death, Director's Exhibit 8; Employer's Exhibit 1. Decision and Order at 3-4.

In considering these opinions, the administrative law judge properly accorded less weight to Dr. Walsh's opinion on the grounds that this physician "provided no explanation for his conclusion" and his opinion "contains no reasoning and does not refer to any specific, underlying medical evidence." Decision and Order at 3; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *see also Crosson v. Director, OWCP*, 6 BLR 1-809 (1984); *Duke v. Director, OWCP*, 6 BLR 1-673, 1-675 (1983). Conversely, the administrative law judge stated that both Drs. Naeye and Hansbarger based their opinions on the miner's medical records and autopsy slides and that Dr. Hansbarger "explained that the miner died from apparent cardiopulmonary failure with aspiration" and "concluded that the miner's chronic obstructive pulmonary disease and carcinoma in his right lung [were] due to his long history of smoking." Decision and Order at 3-4. Therefore, the administrative law judge found that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Decision and Order at 4.

Inasmuch as an administrative law judge has broad discretion in assessing the evidence of record to determine whether a party has met its burden of proof, *see Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984), and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge, *see Markus v. Old Ben Coal Co.*, 712 F.2d 322, 5 BLR 2-130 (7th Cir. 1983)(administrative law judge is not bound to accept opinion or theory of any given medical officer, but weighs evidence and draws his own inferences); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), we affirm the administrative law judge's Section 718.205(c) finding. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Maddaleni v. Director, OWCP*, 961 F.2d 1524, 16 BLR 2-68 (10th Cir. 1992); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Because we affirm the administrative law judge's Section 718.205(c) finding, that claimant failed to establish that the miner's death was due to pneumoconiosis, *see Shuff, supra*; *see also Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989), a

requisite element of entitlement under Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*); *see also Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993), we also affirm his denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge