

BRB No. 02-0180 BLA
and 02-0180 BLA-A

MARY E. McKENZIE)	
(Widow of HERMAN A. McKENZIE))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ZIEGLER COAL COMPANY)	DATE ISSUED:
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

Tab R. Turano (Greenberg Traurig LLP), Washington, D. C., for employer.

Helen H. Cox (Eugene Scalia, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order - Denial of Benefits (00-BLA-0003) of Administrative Law Judge Robert L. Hillyard rendered 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).¹ In light of the parties' stipulation, the administrative law judge found at least ten years of coal mine employment and based on the date of filing, he adjudicated the claim pursuant to 20 C.F.R. Part 718.² The administrative law judge found that the employer was collaterally estopped from contesting the issue of the existence of pneumoconiosis, which had been previously established in the living miner's claim, and he concluded that the evidence was insufficient to establish that pneumoconiosis caused, contributed to or hastened the miner's death. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding the evidence was insufficient to establish death due to pneumoconiosis pursuant to 718.205(c) and further, that the administrative law judge properly found that the doctrine of collateral estoppel precluded relitigation of the existence of pneumoconiosis. On cross-appeal, employer contends that the administrative law judge erred in finding employer collaterally estopped from relitigating the issue of pneumoconiosis hence, the case should be remanded for the administrative law judge to consider the existence of pneumoconiosis. The Director, Office of Workers' Compensation Programs (the Director), responds, contending that there has been no violation of the doctrine of collateral estoppel and urging affirmance of the denial of benefits.

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment,

¹ The 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. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² The miner was awarded benefits on September 20, 1994 by Administrative Law Judge Donald W. Mosser on a claim filed September 9, 1992. The miner died on December 16, 1998. Director's Exhibit 4. Claimant filed a survivor's claim for benefits on February 5, 1999, which is the subject of the appeal before us now.

and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). In a survivor's claim filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); see *Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 183, 16 BLR 2-121, 2-128 (7th Cir. 1992).

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 administrative law judge's Decision and Order is supported by substantial evidence, contains no reversible error, and must be affirmed. Contrary to claimant's contentions, the administrative law judge considered the medical documentation underlying the opinions of claimant's treating physicians, Drs. Buell and Huh, that pneumoconiosis contributed to the miner's death, but found that neither opinion provided a thorough, reasoned analysis to support a finding that the miner's death was due to pneumoconiosis. This was rational. *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 22 BLR 2-311 (7th Cir. 2001); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Hopton v. United States Coal Corp.*, 7 BLR 1-12 (1984); Director's Exhibits 5, 15.³ The administrative law judge permissibly accorded more weight to the contrary opinions of Drs. Tuteur, Repsher, Fino and Renn, that pneumoconiosis did not cause, contribute to, or hasten death, as he found the opinions consistent, better reasoned and documented. This was rational. The administrative law judge also permissibly accorded greater weight to their opinions based on their superior qualifications, *Tedesco, supra*; *Clark, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields, supra*, and he correctly observed that the credentials of Drs. Huh and Buell were not in the record. Decision and Order at 23. In addition, contrary to claimant's contention, the administrative law judge considered Dr. Cohen's opinion, and permissibly found that, although the opinion was based on a review of the evidence, it was outweighed by the contrary, consistent opinions of Drs. Tuteur, Repsher, Fino and Renn. This was rational. *Clark, supra*; *Dillon, supra*; *Fields, supra*. Therefore, contrary to claimant's contention, the administrative law judge did weigh all of the relevant evidence and he provided adequate findings and conclusions as required by

³ The miner's death certificate, completed by Dr. Huh, lists lung cancer as the immediate and only cause of death. Director's Exhibit 4.

the Administrative Procedure Act. 5 U.S.C. 557(c)(3)(A), as incorporated into the Act by 5 U.S.C. 554(c)(2), 33 U.S.C. 919(d) and U.S.C. 932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

The administrative law judge is empowered to weigh the medical evidence of record and 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 if the administrative law judge's findings are supported by substantial evidence, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Accordingly, since the administrative law judge rationally concluded that the evidence of record was insufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner's death, we must affirm the administrative law judge's denial of benefits in this survivor's claim as it is supported by substantial evidence and is in accordance with law.⁴ *Railey, supra.*

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

⁴ Because we affirm the administrative law judge's denial of benefits, we need not address employer's argument on cross-appeal regarding the application of collateral estoppel to the issue of pneumoconiosis.