

BRB No. 02-0415 BLA

VELMA JOYCE PETERS)	
(Widow of HOWARD PETERS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
WESTMORELAND 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 Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Velma Joyce Peters, Dryden, Virginia, *pro se*.

Douglas A. Smoot and Kathy L. Snyder (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals,¹ without the assistance of counsel, the Decision and Order (01-BLA-0446) of Administrative Law Judge Jeffrey Tureck denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of

¹ Ron 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).

1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).² Based on the filing date of June 27, 2000, the administrative law judge adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718.³ Director's Exhibit 1. The administrative law judge credited the miner with twenty-three and one half years of coal mine employment for Westmoreland Coal Company, but found the evidence of record insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) in this survivor's claim for benefits. Accordingly, benefits were denied.⁴

On appeal, claimant contends that she is entitled to 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 (the Director), is not participating in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers

² 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, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³ Claimant is the widow of the miner, Howard Peters, who died on April 4, 2000. The miner's death certificate lists coronary thrombosis due to coronary artery disease as the cause of death. Director's Exhibit 6.

⁴ The administrative law judge noted that while there was conflicting evidence as to the existence of coal workers' pneumoconiosis, because there was no credible evidence to support a connection between the miner's death and pneumoconiosis, even if he had the disease, there was no reason to resolve this conflict. Decision and Order at 3 n.3.

the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *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 due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, if pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, if death was caused by complications of pneumoconiosis, or if the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. See 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 *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *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. The administrative law judge found that the only opinion to attribute the miner's death to pneumoconiosis, that of Dr. Gash, the miner's attending cardiologist, was incredible because it was "speculative" and "based either on misinformation or a lack of information." Decision and Order at 4.⁵ Moreover, the

⁵ Dr. Gash, after noting that the miner had biopsy documentation of pneumoconiosis, stated that:

"I feel that certainly his pulmonary disease created an extra strain on not just his cardiovascular system but his heart in particular. With his form of pulmonary disease, there was an increased substrate for cardiac arrhythmias, and I would certainly suspect that his untimely death was likely an arrhythmic death. . . . I do not believe one can rule out a contribution of his pulmonary disease to his untimely demise. Claimant's Exhibit 1 - Letter dated May 29,

administrative law judge found that inasmuch as “the other relevant medical opinions in the record uniformly stated that the miner’s death was not due, in any way, to coal workers’ pneumoconiosis,”⁶ and these opinions were “generally well-reasoned and in accord with the medical evidence of record,” and were made by highly qualified specialists or pathologists, “even if Dr. Gash’s opinion was probative, it would be outweighed by the consistent opinions of these other physicians that pneumoconiosis played absolutely no role in the miner’s death.” Decision and Order at 4. This was rational. See 20 C.F.R. §718.104(d)(5); *Jericol Mining, Inc. v. Napier*, F.3d , 2002 WL 1988221 (6th Cir. Aug. 30, 2002); *U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145 (1984).

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, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, as the administrative law judge permissibly found the opinion of Dr. Gash was insufficient to establish claimant’s burden of proof that the miner’s death was caused, contributed to, or hastened by pneumoconiosis at Section 718.205(c), and correctly determined that the contrary probative medical opinions of record found that “pneumoconiosis played absolutely no role in the miner’s death[,]” Decision and Order at 4, we must affirm the administrative law judge’s finding that claimant failed to establish death due to pneumoconiosis. 20 C.F.R. §§718.205(c); 718.104(d)(5); see *Napier, supra*; *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 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).

2001.

⁶ See Director’s Exhibits 6, 7, 9; Employer’s Exhibits 2, 3, 5, 8, 9, 10, 11, 12, 15.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge