

BRB No. 03-0299 BLA

BEULAH C. HURLEY (Widow of )  
DARRYEL HURLEY) )  
 )  
Claimant-Petitioner )  
 ) DATE ISSUED: 09/26/2003  
 )  
v. )  
 )  
SOUTHERN ELKHORN 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 - Denying Benefits of Thomas F. Phalen, Jr.,  
Administrative Law Judge, United States Department of Labor.

Beulah C. Hurley, Phyllis, Kentucky, *pro se*.

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

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

PER CURIAM:

Claimant, the miner's widow,<sup>1</sup> appeals, without the assistance of legal counsel, the Decision and Order (2001-BLA-790) of Administrative Law Judge Thomas F. Phalen, Jr., 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).<sup>2</sup>

The administrative law judge credited the miner with 19.376 years of coal mine employment and adjudicated the claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge considered the evidence of record and found that it was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), but insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant generally contends that she is entitled to benefits. Employer responds, urging affirmance of the denial of benefits.<sup>3</sup> The Director, Office of Workers' Compensation Programs, has not filed a response brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *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, are supported by substantial evidence, and are 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 demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202,

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<sup>1</sup> Claimant is Beulah C. Hurley, the surviving spouse of the deceased miner, Darryel Hurley, who died on May 16, 2000. Decision and Order at 20; Director's Exhibits 5, 9.

<sup>2</sup> 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 (2002).

<sup>3</sup> Although employer asserts that the administrative law judge correctly found that the evidence failed to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), employer contends that the administrative law judge nonetheless erred in finding the existence of pneumoconiosis established pursuant to 20 C.F.R. §718.202(a).

718.203, 718.205(a); *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). For survivors' claims filed on or after January 1, 1982, death will be considered 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 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of death if it 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); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

After consideration of the administrative law judge's Decision and Order, the arguments of the parties and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error.

In determining whether the miner's death was caused or hastened by pneumoconiosis, the administrative law judge found that the preponderance of the medical opinion evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). The administrative law judge reasonably found that since none of the physicians attributed the miner's death to pneumoconiosis, claimant failed to establish entitlement to survivor's benefits.<sup>4</sup> We, therefore, affirm the administrative law judge's finding that the medical evidence failed to establish that pneumoconiosis caused, contributed to, or hastened the miner's death. 20 C.F.R. §718.205(c); *see Brown*, 996 F.2d 812, 17 BLR 2-135.

Claimant has the general burden of establishing entitlement and bears the risk of non-persuasion if her evidence is found insufficient to establish a crucial element of entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *White v. Director, OWCP*, 6 BLR 1-368 (1983). Furthermore, 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 Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987). In this case, the administrative law judge permissibly found that the evidence was insufficient to establish death due to pneumoconiosis because he found there were no credible medical opinions attributing the miner's death to pneumoconiosis. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Consequently, we affirm the administrative law judge's finding that the

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<sup>4</sup> The death certificate list the causes of the miner's death as acute myocardial infarction, A.S.H.D., and coronary artery disease. Decision and Order at 17; Director's Exhibit 5.

medical opinions of record failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Inasmuch as claimant has not met her burden of proof on an essential element of entitlement under 20 C.F.R. Part 718 in this survivor's claim, benefits are precluded, and we need not address the administrative law judge's findings under Section 718.202(a). 20 C.F.R. §718.205(c); *see Brown*, 996 F.2d 812, 17 BLR 2-135; *Clark*, 12 BLR 1-149; *Trent*, 11 BLR 1-26; *Trumbo*, 17 BLR 1-85; *Neeley*, 11 BLR 1-85. Consequently, we affirm the administrative law judge's denial of benefits as it is supported by substantial evidence and in accordance with law. *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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PETER A. GABAUER, Jr.  
Administrative Appeals Judge