

BRB No. 97-1781 BLA

VIRGIE CHRISTIAN)	
(Widow of WILLIE CHRISTIAN))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
WALLACE TRUCKING 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 Edith Barnett, Administrative Law Judge, United States Department of Labor.

Virgie Christian, Grundy, Virginia, *pro se*.

Gary K. Stearman (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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 and McGRANERY, Administrative Appeals Judges and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, widow of the deceased miner and without the assistance of counsel,¹

¹ Tim White, 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. White is not representing claimant on appeal. See 20 C.F.R. §§802.211(e), 802.220; *Shelton v. Claude V. Keen Trucking*

appeals the Decision and Order (96-BLA-1759) of Administrative Law Judge Edith Barnett 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). Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.² The administrative law judge initially found that claimant was not an eligible surviving spouse pursuant to 20 C.F.R. §725.212. The administrative law judge also concluded that the evidence of record was 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 is not participating on appeal. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

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. *McFall v. Jewell Ridge Coal Corp.*, 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 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).

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; that the pneumoconiosis arose out of coal mine employment; and that the miner's death was due to, or substantially contributed to, pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205, 718.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck Co.*, 19 BLR 1-88 (1995) (Order).

² The miner filed his claim for benefits on April 20, 1973, which was denied on May 20, 1980. Employer's Exhibits 14, 23. No further action was taken on the miner's claim. The miner died on September 13, 1994. Director's Exhibit 9. Claimant filed the instant claim for survivor's benefits on February 23, 1995. Director's Exhibit 1.

v. Director, OWCP, 14 BLR 1-29 (1990); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1993); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

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, in the instant case, permissibly determined that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c).³ *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The death certificate lists the immediate cause of death as cardiopulmonary arrest due to acute myocardial infarction due to arteriosclerotic heart disease. Director's Exhibit 9. In the autopsy, Dr. Abrenio listed heart disease, and simple, mild pneumoconiosis, that did not play a significant role in the miner's death. Director's Exhibit 10. Dr. Naeye found that the pneumoconiosis was far too mild to have hastened the miner's death. Director's Exhibit 11. The administrative law judge rationally concluded that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis as the evidence indicates that death was due to heart disease and that the pneumoconiosis was too mild to have been a substantially contributing cause of death. Decision and Order at 3; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The administrative law judge is empowered to weigh the medical evidence and to draw her 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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we 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. *Shuff, supra*; *Trumbo, supra*.

³ Although not specifically addressed by the administrative law judge, claimant could not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(3) as there is no evidence of complicated pneumoconiosis in the record. *Larioni v. Director, OWCP*, 6 BLR 1-616 (1983).

Inasmuch as claimant has failed to establish that the miner's death was due to pneumoconiosis, a requisite element of entitlement for a survivor's claim pursuant to Part 718, entitlement thereunder is precluded.⁴ *Shuff, supra; Trumbo, supra; Neeley, supra.*

⁴ As we affirm the administrative law judge's denial of benefits on the merits, we need not address whether claimant has established her dependency upon the miner pursuant to 20 C.F.R. §725.212.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge