

BRB No. 94-2334 BLA

RHODELIA TAYLOR )  
(Widow of HARRY TAYLOR, JR.) )

)  
Claimant-Petitioner )

v. )

) DATE ISSUED:  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )

)  
Respondent ) DECISION and ORDER

Appeal of the Decision and Order of Evertte E. Thomas, Administrative Law  
Judge, United States Department of Labor.

Rhodelia Taylor, Caryville, Indiana, *pro se*.

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

PER CURIAM:

Claimant<sup>1</sup> appeals, without the assistance of counsel, the  
Decision and Order (93-BLA-1173) of Administrative Law Judge Everette E. Thomas  
denying modification 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*

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<sup>1</sup>Claimant is Rhodelia Taylor, the miner's widow, who filed a survivor's claim for  
benefits on January 24, 1985. Director's Exhibit 3. The miner, Harry Taylor, filed a  
claim for benefits on October 27, 1982 and died on November 18, 1984. Director's  
Exhibits 1, 8.

seq. (the Act). In a Decision and Order issued on September 10, 1987, Administrative Law Judge Giles McCarthy considered the miner's and survivor's claims and found that the evidence established that the miner had seven and one-half years of qualifying coal mine employment, that the miner failed to establish that he had pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and that claimant failed to establish that the miner's death was due to pneumoconiosis. Director's Exhibit 36. Accordingly, benefits were denied on both claims.

Claimant filed several requests for modification, the last of which being one dated August 10, 1992.<sup>2</sup> Director's Exhibit 54. In the present Decision and Order,

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<sup>2</sup>By letter postmarked October 8, 1987, claimant appealed the administrative law judge's Decision and Order and submitted new evidence in support of her appeal. Director's Exhibit 37. Claimant then, through her attorney, requested modification of the Decision and Order on December 1, 1988. Director's Exhibit 41. The request for modification was denied on March 21, 1991. On December 11, 1991 claimant, without the assistance of counsel, submitted additional evidence and again requested modification. Director's Exhibit 52. This request for modification was denied on January 31, 1992. Director's Exhibit 53. On August 10, 1992, claimant again requested modification and submitted copies of previously submitted evidence. Director's Exhibit 54. On February 24, 1993, the district director again

the administrative law judge found that claimant did not establish a mistake in a determination of fact pursuant to 20 C.F.R. §725.310. Accordingly, claimant's request for modification was denied.

Claimant appeals this denial. No response brief has been received from the Director, Office of Workers' Compensation Programs (the Director).

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue 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 findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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 support of her request for modification claimant submitted three negative interpretations, dated January 2, 1991, of three x-rays taken on October 22, 1984, November 5, 1984 and November 18, 1984, Director's Exhibits 46-48. Claimant also submitted medical records from Dr. Bruton's office dating from 1982 until 1984, a pathologists report dated October 25, 1984, and medical opinions from Drs. Naeye

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denied claimant's request for modification and claimant then requested a formal hearing. Director's Exhibits 54, 59.

and Burton dated January 31, 1991 and October 20, 1987 respectively. Director's Exhibits 49, 50, 52.

Of the newly submitted evidence, only Dr. Bruton's one page letter, which states that the miner's x-rays are compatible with pneumoconiosis, that his anthracosis was a direct result of his coal mining occupation and that "his anthracosis certainly contributed to his demise", supports a finding of the existence of pneumoconiosis. Director's Exhibit 52. The administrative law judge considered this opinion and permissibly assigned it no weight as there is no support in the record for Dr. Bruton's conclusions.<sup>3</sup> Decision and Order at 5; see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The administrative law judge further found that Dr. Naeye's opinion, that the miner does not have pneumoconiosis, is supported by the autopsy and biopsy evidence. Decision and Order at 4; Director's Exhibit 50. As the evidence submitted by claimant is insufficient to establish the existence of pneumoconiosis, we affirm the

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<sup>3</sup>The only other evidence of record indicative of the existence of pneumoconiosis is the July 24, 1985 report of Dr. Sinicrope. Director's Exhibit 32. In his report, Dr. Sinicrope stated that "With the knowledge that Mr. Taylor worked in and around coal mines for a 10 year span, it is impossible to determine how much of his disease was related to his Wegener's granulomatosis and how much related to his black lung disease. It is my personal feeling that Mr. Taylor suffered from a combination of these illnesses, although the latter is not as easily proved." Director's Exhibit 32. Administrative Law Judge McCarthy permissibly assigned this opinion no weight as Dr. Sinicrope's opinion is equivocal and based solely on the fact that Mr. Taylor was a coal miner. Director's Exhibit 36 at 6; see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Sabett v. Director, OWCP*, 7 BLR 1-299 (1984).

administrative law judge's finding that claimant did not establish a mistake in a determination of fact and his denial of the request for modification.<sup>4</sup>

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

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<sup>4</sup>It is noted that the administrative law judge erroneously stated that Administrative Law Judge McCarthy's findings regarding the presence of pneumoconiosis and the length of the miner's coal mine employment are not determinations of fact but rather conclusions of law which could not be challenged by requesting modification. Decision and Order at 4-6. See *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994). Any error is harmless, however, because the administrative law judge considered the evidence and permissibly found that claimant failed to establish the existence of pneumoconiosis. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge