

BRB No. 97-0377 BLA

MILDRED SANDERS)	
(Widow of ROBERT SANDERS, JR.))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	DECISION and ORDER
Respondent)	

Appeal of the Decision and Order of Samuel J. Smith, Administrative Law Judge, United States Department of Labor.

Mildred Sanders, Compton, California, *pro se*.

Jeffrey S. Goldberg (J. Davitt McAteer, Acting Solicitor of Labor; 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, the United States Department of Labor.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order (95-BLA-1462) of Administrative Law Judge Samuel J. Smith denying benefits on claims 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). The administrative law judge credited the miner with ten years of coal mine employment, but concluded that the medical evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a).

¹ Claimant is Mildred Sanders, who filed her application for survivor's benefits on November 30, 1994. Director's Exhibit 2. Robert Sanders, Jr., the miner, filed two claims which were finally denied in 1980 and 1986, and had a third claim pending at the time of his death on November 9, 1994. Director's Exhibits 1, 27, 28.

The administrative law judge also found that the record contained no evidence that the miner's death was due to or hastened by pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, he denied benefits.

On appeal, claimant generally challenges the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of the survivor's claim, but asserting that remand is required for further consideration of the miner's claim.²

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 Co.*, 12 BLR 1-176 (1989). The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. § 921(b)(3), as incorporated into the Act by 30 U.S.C. § 932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under 20 C.F.R. Part 718, a miner must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment, and a survivor must prove by a preponderance of the evidence that the miner's death was due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204, 718.205. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Pursuant to Section 718.202(a)(1), the administrative law judge found that the record contains "no readings of pneumoconiosis." Decision and Order at 10. Review of the record indicates that the x-ray evidence is uniformly negative. Director's Exhibits 16, 20, 21, 27, 28. Therefore, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(1).

² We affirm as unchallenged on appeal and not adverse to claimant the administrative law judge's finding of ten years of coal mine employment. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Pursuant to Section 718.202(a)(2) and (3), the administrative law judge correctly found that the record contains no diagnosis of pneumoconiosis either by biopsy or autopsy,³ and that the presumptions at Sections 718.304, 718.305, and 718.306 are inapplicable in this miner's claim filed after January 1, 1982, in which there is no evidence of complicated pneumoconiosis and the miner died after March 1, 1978. Decision and Order at 11; see 20 C.F.R. §§718.304, 718.305, 718.306. We therefore affirm these findings.

Pursuant to Section 718.202(a)(4), the administrative law judge considered the medical opinions relevant to the existence of pneumoconiosis.⁴ Dr. Mohler examined the miner twice and found no evidence of pneumoconiosis. Director's Exhibit 27. Dr. Buchfuhrer examined the miner and diagnosed "coal workers' pneumoconiosis" based on the rationale that the miner was a "non-smoker with fairly significant obstructive [and] restrictive lung disease" and because he believed that the miner's chest x-ray "confirm[ed] problems." Director's Exhibit 28. Dr. Potkin examined the miner and diagnosed lung cancer and moderately severe airflow obstruction, both of which he opined were "likely related to pneumoconiosis or chronic tobacco use." Director's Exhibit 17. Upon the Department of Labor's request for clarification of his opinion, Dr. Potkin diagnosed chronic obstructive pulmonary disease and chronic bronchitis significantly related to the miner's coal mine employment. Director's Exhibit 23.

³ The autopsy prosector diagnosed lung cancer, atherosclerosis, pulmonary emphysema, and diffuse fibrosis, but did not link any of these diagnoses to coal dust exposure. Director's Exhibit 12; see 20 C.F.R. §718.201. The pathologist who reviewed the autopsy report and lung tissue slides opined that pneumoconiosis was absent. Director's Exhibit 13.

⁴ The administrative law judge correctly noted that the miner's hospital records contained a diagnosis of chronic obstructive pulmonary disease, but that this diagnosis was not linked to coal dust exposure. Decision and Order at 12; Director's Exhibit 15; see 20 C.F.R. §718.201.

The administrative law judge permissibly accorded diminished weight to Dr. Potkin's diagnosis because he found that the physician failed to explain how he considered the miner's extensive smoking history in diagnosing pneumoconiosis.⁵ See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Further, inasmuch as an administrative law judge may question the basis of a medical opinion where an x-ray relied upon by the physician is subsequently read negative by more highly-qualified readers, *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985), the administrative law judge permissibly accorded less weight to Dr. Buchfuhrer's opinion because it was based, in part, on Dr. Steinberg's unclassified reading of the December 3, 1986 x-ray,⁶ which was subsequently read negative by a Board-certified radiologist and B-reader. Director's Exhibit 28. We have considered the Director's arguments regarding the administrative law judge's weighing of Dr. Buchfuhrer's opinion, Director's Brief at 15, but we conclude that the administrative law judge provided valid reasons for his weighing of the evidence, and as the Board is not empowered to reweigh the evidence, see *Anderson, supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), or interfere with credibility determinations unless they are inherently incredible or patently unreasonable, see *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985), we affirm the administrative law judge's finding pursuant to Section 718.202(a)(4).

Further, because the record contains no evidence that the miner's death was due to or hastened by pneumoconiosis, we affirm the administrative law judge's finding pursuant

⁵ Dr. Potkin recorded a history of smoking two packs of cigarettes per day for fifty-seven years. Director's Exhibit 17. The employment history form with which the physician was provided indicated that the miner's coal mine employment had ended approximately forty-six years ago. Director's Exhibit 3.

⁶ Dr. Steinberg, whose radiological credentials are not in the record, read the x-ray as showing interstitial markings consistent with fibrosis. Director's Exhibit 28.

to Section 718.205(c).⁷ See *Bradberry v. Director, OWCP*, 117 F.3d 1361, BLR (11th Cir., 1997). Because claimant has failed to establish the existence of or death due to pneumoconiosis pursuant to Sections 718.202(a) and 718.205(c), we affirm the denial of benefits in both the miner's and the survivor's claims. See *Trent, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

⁷ The death certificate indicates that the miner died from pulmonary congestion due to bronchopneumonia due in turn to bronchogenic carcinoma. Director's Exhibit 11. The autopsy prosector opined that death resulted from myocardial ischemia secondary to coronary thrombosis. *Id.* Dr. Naeye, whom the administrative law judge correctly noted is Board-certified in anatomical and clinical pathology, concluded that pneumoconiosis was absent and thus, did not hasten the miner's death. Director's Exhibit 13.