

BRB No. 01-0797 BLA

GERALDINE B. CONNORS )  
(Widow of MARTIN E. CONNORS) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 )  
U.S. STEEL MINING COMPANY )  
 )  
Employer-Respondent )  
 )  
 )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
Party-in-Interest )

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Geraldine B. Connors, Brownsville, Pennsylvania, *pro se*.

Travis W. Smith (Burns, White & Hickton), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant,<sup>1</sup> the miner's widow and without the assistance of counsel, appeals the Decision and Order (2000-BLA-1078) of Administrative Law Judge Richard A. Morgan 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

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<sup>1</sup>Claimant is Geraldine B. Connors, the miner's widow. The miner, Martin E. Connors died on September 20, 1999, and claimant filed her survivor's claim, the subject of the instant appeal, on November 22, 1999. Director's Exhibits 1, 10.

Act).<sup>2</sup> The administrative law judge found, and the parties stipulated to, twenty-three years and one month of coal mine employment, that employer is the proper responsible operator and to the existence of pneumoconiosis arising out of the miner's coal mine employment. Decision and Order at 2. Considering entitlement in this survivor's claim pursuant to the provisions of 20 C.F.R. Part 718, the administrative law judge determined that the only issue to be resolved was whether the miner's death was due to pneumoconiosis. Decision and Order at 2. The administrative law judge, after reviewing all of the relevant evidence of record, concluded that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Decision and Order at 3-5. Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in failing to properly weigh the medical opinion and lay evidence of record which establishes that the miner's death was due to pneumoconiosis. Employer responds urging affirmance of the administrative law judge's Decision and Order as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.<sup>3</sup>

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by

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<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 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>3</sup>As the administrative law judge's length of coal mine employment and responsible operator determinations, as well as his findings pursuant to 20 C.F.R. §§718.202(a) and 718.203, are favorable to claimant and unchallenged on appeal, they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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). If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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 arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 725.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. See 20 C.F.R. §718.205(c)(5); see also *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).<sup>4</sup>

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<sup>4</sup>This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit as the miner was last employed in the coal mine industry in the Commonwealth of Pennsylvania. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 3.

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 properly considered the entirety of the medical opinion evidence of record and rationally found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205. *See Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The relevant evidence of record concerning the cause of death consists of three medical opinions and the death certificate.<sup>5</sup> Dr. Wecht, who performed the autopsy and is board-certified in anatomical, clinical and forensic pathology, opined that the miner died as a result of adenocarcinoma of the prostate gland with metastases. Dr. Wecht also stated that coal workers' pneumoconiosis, which was the basis for the chronic pulmonary disease that was present, was a substantial contributing factor in the miner's death as the miner would not have died when he did if he had normal lungs. Director's Exhibit 34; Claimant's Exhibit 1. The death certificate listed the miner's cause of death as prostate cancer. Director's Exhibit 10. Dr. Perper, who is board-certified in anatomic and forensic pathology, examined the evidence of record and opined that the miner's death was caused by acute fungal bronchopneumonia with abscesses complicating metastatic carcinoma of the prostate, and stated that the miner's simple coal workers' pneumoconiosis did not substantially contribute to his death. Director's Exhibit 32. Dr. Bush, who is board-certified in anatomic and clinical pathology, reviewed the evidence of record and opined that the miner had simple coal workers' pneumoconiosis which did not cause or contribute to the miner's death, which resulted from widespread malignancy originating in the prostate gland. Employer's Exhibits 1, 2.

The administrative law judge, properly considered this evidence and rationally concluded that it was insufficient to establish claimant's burden of proof pursuant to Section 718.205 as the administrative law judge permissibly determined that the opinion of Dr. Wecht, the only affirmative evidence that the miner's death was due to pneumoconiosis, is not supported by the evidence of record and was outweighed by the better reasoned and supported contrary opinions of Drs. Perper and Bush. *See Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Perry, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King*

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<sup>5</sup>The administrative law judge also properly noted that the record contains the treatment summaries from the Brownsville General Hospital, which indicate the miner's treatment for prostate cancer and its complications; and the pulmonary evaluations from Centerville Clinics, Inc., which indicate the absence of any significant pulmonary disease as the objective studies did not indicate that the miner was totally disabled. Decision and Order at 4; Director's Exhibits 33, 38, 42.

*v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); Director's Exhibits 10, 32, 34; Claimant's Exhibit 1; Employer's Exhibits 1, 2; Decision and Order at 5. Although an administrative law judge may accord determinative weight to an opinion because it is offered by the autopsy prosector, he is not required to do so. *See generally Mancina v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-114 (3d Cir. 1997); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Clark, supra*; *Hutchens, supra*; *Kuchwara, supra*; *Piccin, supra*. Contrary to claimant's assertion, as the administrative law judge, in this case, has rationally accorded greater weight to the opinions of Drs. Perper and Bush, a remand is not required as the administrative law judge is not obligated to give the prosector's opinion greater weight because he has had the opportunity to review the entire lung. *Urgolites v. BethEnergy Mines, Inc.*, 17 BLR 1-20 (1992); *Gruller v. Bethenergy Mines, Inc.*, 16 BLR 1-3 (1991); *Cantrell v. United States Steel Corp.*, 6 BLR 1-1003 (1984).

Claimant has the burden of establishing entitlement and bears the risk of non-persuasion if her evidence is found insufficient to establish a crucial element. *See Trumbo, supra*; *Haduck, supra*; *Boyd, supra*; *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *White v. Director, OWCP*, 6 BLR 1-368 (1983). As the administrative law judge rationally found the evidence indicating that the miner's death was due to pneumoconiosis was outweighed by the contrary evidence of record, claimant has not met her burden of proof on all the elements of entitlement. *Trumbo, supra*; *Haduck, supra*; *Boyd, supra*. 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 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Furthermore, since the determination of whether the miner's death is due to pneumoconiosis is primarily a medical determination, claimant's testimony alone, under the circumstances of this case, could not alter the administrative law judge's findings and therefore could not satisfy claimant's burden of proof on this issue. *See* 20 C.F.R. §718.205; *Salyers v. Director, OWCP*, 12 BLR 1-193 (1989); *Anderson, supra*; *Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985); *Matteo v. Director, OWCP*, 8 BLR 1-200 (1985). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205 as it is supported by substantial evidence and is in accordance with law. *See Lukosevicz, supra*; *Neeley, supra*; *Trumbo, supra*.

Inasmuch as claimant has failed to establish that the miner's death was due to pneumoconiosis, a requisite element of entitlement in a survivor's claim pursuant to 20

C.F.R. Part 718, entitlement thereunder is precluded. *See Lukosevicz, supra; Trumbo, supra; Kneel v. Director, OWCP*, 11 BLR 1-85 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987).

Accordingly, the administrative law judge's Decision and Order 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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BETTY JEAN HALL  
Administrative Appeals Judge