

BRB No. 02-0425 BLA

LILLIAN C. CASTERLINE	)	
(Widow of EUGENE J. CASTERLINE)	)	
	)	
Claimant-Petitioner	)	
	)	DATE ISSUED:
	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Thomas S. ometa, Kingston, Pennsylvania, for claimant.

Timothy S. Williams (Eugene Scalia, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant,<sup>1</sup> the miner's widow, appeals the Decision and Order (2001-BLA-00490) of Administrative Law Judge Robert D. Kaplan 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

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<sup>1</sup>Claimant is Lillian C. Casterline, the miner's widow. The miner, Eugene J. Casterline, was awarded benefits, based upon his living miner's claim, on January 25, 1996. Director's Exhibit 8. The miner died on August 21, 2000. Director's Exhibit 2. Claimant filed her survivor's claim, the subject of the instant appeal, on September 8, 2000. Director's Exhibit 1.

1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).<sup>2</sup> The administrative law judge found, and the parties stipulated to, ten and one-half years of coal mine employment and to the existence of pneumoconiosis arising out of coal mine employment. Decision and Order at 2; Hearing Transcript at 15-16. 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 2-3; Hearing Transcript at 15; Director's Exhibit 9. 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 3-6. Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in failing to properly review the evidence of record which would establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. The Director, Office of Workers' Compensation Programs, responds urging affirmance of the administrative law judge's Decision and Order as supported by substantial evidence.<sup>3</sup>

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

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

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>

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 rationally found that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205.<sup>5</sup> *See Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). Claimant argues that the administrative law judge erred in failing to accord appropriate weight to the opinion of Dr. Burnett, the miner's treating physician, as it is sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Claimant's Brief at 4-5. We do not find merit in claimant's argument. Claimant's contention constitutes a request that the Board reweigh the evidence, which is beyond the scope of the Board's powers. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). The administrative law judge must determine the credibility of the evidence of record and the weight to be accorded this evidence when deciding whether a party has met its

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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 8.

<sup>5</sup>The presumption at 20 C.F.R. §718.304 is not applicable in this case as the record indicates that there is no evidence of complicated pneumoconiosis contained therein. *See* 20 C.F.R. §718.205(c)(3).

burden of proof. *See Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986). Further, contrary to claimant's contention, an administrative law judge is not required to accord determinative weight to an opinion solely because it is offered by a treating physician. *Mancia 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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *see also Balsavage v. Director, OWCP*, 295 F.3d 390, BLR 2- (3rd Cir. 2002).

Moreover, the administrative law judge, taking into account all of the evidence, including the death certificate, rationally determined that claimant failed to establish her burden of proving that the miner's death was caused, or hastened by, pneumoconiosis. Decision and Order at 6. The relevant evidence of record concerning the cause of death consists of two medical opinions and the death certificate. Dr. Sherman, who is board-certified in internal medicine and pulmonary disease, reviewed the evidence of record and opined that there was no evidence that coal workers' pneumoconiosis was a substantial contributing factor in the miner's death, hastened his death in any way or caused his death. Director's Exhibits 10-13. Dr. Burnett, who is board-certified in internal medicine and is the miner's treating physician, opined that the miner had pneumoconiosis which caused stress on his heart and, ultimately, cardiac arrest and his death. Director's Exhibit 7; Claimant's Exhibit 1. The death certificate, signed by Dr. Burnett, lists the cause of death to be cardiac arrest due to coronary artery disease and black lung. Director's Exhibit 2. The administrative law judge, in a proper exercise of his discretion, fully considered this evidence and rationally concluded that the only opinions supportive of claimant's burden, those of Dr. Burnett, were unreasoned and therefore insufficient to establish claimant's burden of proof as the physician's diagnosis is not supported by any data and he offers no support for his conclusions. *Lango, supra*; *Clark, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Kuchwara, supra*; Decision and Order at 4, 6; Director's Exhibits 2, 7; Claimant's Exhibit 1. Consequently, as claimant makes no other specific challenge to the administrative law judge's findings with respect to the weighing of Dr. Burnett's opinion, we affirm the administrative law judge's finding that the medical evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis as it is supported by substantial evidence and is in accordance with law. *See Sarf v. Director, OWCP*, 10 BLR 1-119 (1987).

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. *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 only evidence supportive of entitlement in this survivor's claim was unreasoned and thus

insufficient to establish that the miner's death was due to pneumoconiosis, claimant has not met her burden of proof on all of 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, supra; Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). 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*.

Because 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