

BRB No. 99-0271 BLA

WELTHA WILLIAMS)	
(Widow of JAMES N. WILLIAMS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Weltha Williams, Jellico, Tennessee, *pro se*.

Helen H. Cox (Henry L. Solano, 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, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, widow of the miner, without the assistance of counsel, appeals the Decision and Order Denying Benefits (97-BLA-1809) of Administrative Law Judge Thomas M. Burke on both the miner's claim and the 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 claims pursuant to 20 C.F.R. Part 718.¹ The administrative law judge concluded that the

¹ The miner filed claims for benefits in 1973, 1983, and 1988, which were denied in July of 1988. Director's Exhibits 31, 32. Claimant filed another, duplicate claim on October 22, 1990, which was denied by the district director June 6, 1995. Director's Exhibits 1, 43.

evidence of record was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), but insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c) and death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied in both the miner's claim and the survivor's claim. On appeal, claimant generally contends that she is entitled to benefits. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the denial of benefits.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 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 in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis is totally disabling. *See* 20

The miner died November 27, 1995. Director's Exhibit 62. Claimant notified the Department of Labor of her intent to pursue the miner's claim and filed her own claim for survivor's benefits on February 2, 1996. Director's Exhibits 52, 57. The Department consolidated the miner's and the widow's claims. Director's Exhibit 77, and following an April 22, 1998 hearing, issued the present decision denying both claims.

² The Director further concedes that although the administrative law judge did not make a specific finding as to whether a material change in conditions was established, his finding of pneumoconiosis, which is not challenged on appeal, constitutes such a finding. We agree. *See Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994).

C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Additionally, in order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 on a survivor's claim filed on or 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 by pneumoconiosis. See 20 C.F.R. §§718.1, 718.205, 718.201; *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *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).

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 administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. With respect to the miner's claim, the administrative law judge, in the instant case, permissibly determined that the evidence of record was insufficient to establish total disability pursuant to Section 718.204. See *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge permissibly found that total disability was not established pursuant to Section 718.204(c)(1)-(3) as only two out of the twelve pulmonary function studies of record were qualifying and one of those was invalidated. *Winchester v. Director, OWCP*, 9 BLR 1-177 (1986); *Houchin v. Old Ben Coal Co.*, 6 BLR 1-1141(1984); *Runco v. Director, OWCP*, 6 BLR 1-945 (1984). Further, the administrative law judge found that only one out of the nineteen blood gas studies of record produced qualifying values.³ *Schretoma v. Director, OWCP*, 18 BLR 1-19 (1993). Additionally, there was no evidence of cor pulmonale with right sided congestive heart failure in the record. See 20 C.F.R. §718.204(c)(1)-(3); Director's Exhibits 5,6,9, 27, 28, 31, 32, 63, 66; Decision and Order at 13-14; *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989); *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). Further, the administrative law judge properly considered the entirety of the medical opinion evidence of record and permissibly accorded more weight to the opinions of Drs. Swann, Sargeant, and Michos finding no total disability, than to the contrary opinions of Drs. Wheeler, Baker, Durham, Charms, Bushey, Wilkens and Moses, as he found them better-documented, reasoned, and supported by the objective evidence of record. Director's Exhibits 7, 28, 28, 31, 40, 44, 62; Claimant's Exhibit 2; Decision and Order at 15; *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir.1989); *Beatty v. Danri Corp.*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995), *aff'g* 16 BLR

³ A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendix B, C respectively. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1), (2).

1-11 (1991); *Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8 (1996); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(*en banc*), *aff'd on recon. en banc*, 9 BLR 1-104 (1986); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Pastva v. The Youghiogheny and Ohio Coal Co.*, 7 BLR 1-829 (1985). We therefore affirm the administrative law judge's finding that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) as it is supported by substantial evidence and is in accordance with law.

With respect to 20 C.F.R. §718.205(c), the administrative law judge permissibly determined that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis. The death certificate lists the immediate cause of death as multiple myeloma, with chronic respiratory failure, chronic obstructive pulmonary disease, anemia and alzheimers' disease listed as other significant conditions. Director's Exhibit 62. Dr. Michos found death due to multiple myeloma, a blood disorder, not associated with coal dust exposure. Director's Exhibit 76. Dr. Wilkens concluded that pneumoconiosis was a significant factor in death based on information in the LaFollette Medical Center records. Director's Exhibit 44. Dr. Moses found that pneumoconiosis contributed to death. Director's Exhibit 40. The administrative law judge rationally concluded that this evidence was insufficient to establish that the miner's death was due to pneumoconiosis as Drs. Wilkens and Moses failed to explain their finding that pneumoconiosis contributed to death, and there is no explanation or etiology provided for the finding of chronic obstructive pulmonary disease in the death certificate. Decision and Order at 10. *Brown, supra*; *York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985); *Fuller v. Gibraltar Corp.*, 6 BLR 1-1292 (1984); *Cosalter v. Mathies Coal Co.*, 6 BLR 1-1182 (1984). Consequently, we affirm the administrative law judge's finding in this survivor's claim as it is supported by substantial evidence and is in accordance with law. *Trumbo, supra*; *Brown, supra*.

Inasmuch as claimant has failed to establish total disability or that the miner's death was due to pneumoconiosis, entitlement to benefits on both the miner's claim and the survivor's claim are precluded.

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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge