

MILDRED RECTOR	)	
(WIDOW of JAMES RECTOR)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING	)	DATE ISSUED: <u>July 16, 2001</u>
AND DRY DOCK CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	
UNITED STATES DEPARTMENT	)	
OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Gary R. West (Patten, Wornom, Hatten & Diamondstein, L.C.), Newport News, Virginia, for claimant.

Benjamin M. Mason (Mason, Cowardin & Mason, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (98-LHC-1109) of Administrative Law Judge Richard E. Huddleston denying benefits on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative

law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant's husband (decendent) worked for employer as a sheet-metal mechanic from 1939 to 1979. The parties stipulated that decendent was exposed to asbestos during the course of his employment. Decendent died on July 14, 1995, and claimant filed a claim for death benefits under the Act, 33 U.S.C. §909, alleging that work-related asbestosis contributed to decendent's death.

The administrative law judge found that claimant was entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), inasmuch as the parties stipulated that decendent was exposed to asbestos, and Drs. SanDiego, Maddox and Hutchins stated that decendent had some degree of asbestosis based on autopsy evidence. The administrative law judge found that employer presented insufficient evidence to establish that decendent did not have asbestosis, and thus, that the Section 20(a) presumption was not rebutted in this regard.

The administrative law judge then proceeded to consider whether decendent's death was caused at least in part, or hastened, by his work-related asbestosis. Dr. Maddox stated that decendent died from multifactorial chronic lung disease with elements of, *inter alia*, grade 2-3C asbestosis. Cl. Ex. 3. Dr. Hutchins opined that decendent had very mild asbestosis, grade 1A, which was of no functional significance, played no role in any respiratory or pulmonary impairment, and did not hasten or contribute to decendent's death. The administrative law judge found both opinions to be well-reasoned and credible. He further stated that both physicians are equally qualified Board-certified pathologists. The administrative law judge thus concluded that the opinions are of equal weight and that, therefore, claimant did not establish that decendent's death was work-related.<sup>1</sup> Accordingly, benefits were denied.<sup>2</sup> See *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28

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<sup>1</sup>The administrative law judge did not apply the Section 20(a) presumption to whether decendent's death was work-related. This error is not specifically raised by claimant and is, in any event, harmless, as Dr. Hutchins's opinion is sufficient to rebut the presumed causal connection.

<sup>2</sup>Thus, the administrative law judge did not reach employer's claim for Section 8(f)

BRBS 43(CRT) (1994).

Relevant to the instant appeal, the administrative law judge accorded no weight to the death certificate. The death certificate states the immediate cause of death as “acute cardiac arrest due to (or as a consequence of) hypoxemia due to (or as a consequence of) COPD.” Listed as “other significant conditions contributing to death but not resulting in the underlying cause” are “cardiomyopathy, CHF, pneumonia, *asbestos exposure*, prostate ca.” Cl. Ex. 1 (emphasis added). The administrative law judge rejected claimant’s contention that this document establishes that asbestosis contributed to decedent’s death. He stated, first, that asbestos exposure is not the same as asbestosis. The administrative law judge further stated that the death certificate was signed before the autopsy was performed, and that therefore, the physician who signed the death certificate, Dr. Hoyt, would not have known that decedent in fact had asbestosis. In this regard, the administrative law judge noted the absence of evidence that Dr. Hoyt had ever examined or treated decedent. Decision and Order at 7.

On appeal, claimant contends only that the administrative law judge erred in assigning no weight to the death certificate in finding that decedent’s death was not work-related. Employer responds, urging affirmance of the administrative law judge’s decision.

We affirm the administrative law judge’s decision to accord no weight to the death certificate. The administrative law judge is entitled to determine the probative value of the evidence of record. See *Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4<sup>th</sup> Cir. 1994). Contrary to claimant’s contention, the administrative law judge was not required to infer that Dr. Hoyt had knowledge of decedent’s occupational history and medical condition merely because the death certificate states he was the “attending physician” and he wrote on the death certificate that asbestos exposure was an “other significant condition contributing to death.” The administrative law judge just as rationally inferred from the record’s absence of reports by Dr. Hoyt that he had not examined or treated decedent. See generally *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5<sup>th</sup> Cir. 1991) (“the choice between reasonable inferences is left to the ALJ.”).

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relief. 33 U.S.C. §908(f).

Moreover, the administrative law judge was not required to credit the notation of asbestos exposure as establishing, in fact, that asbestosis contributed to decedent's death. The administrative law judge properly found that asbestosis was not diagnosed until after the autopsy was performed. See Emp. Ex. 4-8. Decedent's exposure to asbestos, to which employer stipulated, does not establish the compensability of decedent's death. Thus, the administrative law judge rationally concluded, based on the fact that asbestosis was not diagnosed until after the autopsy was performed, that the death certificate cannot establish that asbestosis, in fact, contributed to decedent's death. See generally *Brown & Root, Inc. v. Sain*, 162 F.3d 813, 32 BRBS 205(CRT) (4<sup>th</sup> Cir. 1998). As the Board is not empowered to reweigh the evidence, and as the administrative law judge's finding is rational and supported by substantial evidence, we reject claimant's contention of error and affirm the denial of death benefits. See generally *Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994).

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge