



as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718, based on claimant's December 1994 filing date.<sup>1</sup> Initially, the administrative law judge credited the miner with twenty-seven and one-half years of coal mine employment and accepted the parties' stipulation that the miner suffered from pneumoconiosis. After weighing the medical evidence of record, the administrative law judge found that claimant met her burden of establishing that pneumoconiosis hastened the miner's death. 20 C.F.R. §718.205(c)(2). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in his weighing of the medical opinion evidence under Section 718.205(c)(2). In response, claimant urges affirmance of the administrative law judge's award of benefits as within a proper exercise of his discretion. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.

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 applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on a survivor's claim filed on or after January 1, 1982 only when claimant meets her burden of establishing that the miner's death was due to pneumoconiosis, where pneumoconiosis was a substantially contributing cause of death, where death was caused by complications of pneumoconiosis, or where complicated pneumoconiosis is established. 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Sumner v. Blue Diamond Coal Co.*, 12 BLR 1-74 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Moreover, the United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises, has held that, pursuant to Section 718.205(c)(2), pneumoconiosis substantially contributes to death if it hastens the miner's death. *Lukosevich v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

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<sup>1</sup> Claimant is the widow of the miner, Robert Browning, who died on August 8, 1994. Director's Exhibit 11. The miner's death certificate listed acute myocardial infarction due to severe atherosclerotic coronary artery disease as the immediate cause of death. *Id.* Pneumoconiosis was listed as a significant condition that contributed to death. *Id.*

After consideration of the administrative law judge's Decision and Order - Awarding Benefits, the issues raised on appeal, and the relevant evidence of record, we conclude that substantial evidence supports the administrative law judge's finding that claimant met her burden of establishing that pneumoconiosis hastened the miner's death pursuant to 20 C.F.R. §718.205(c)(2). Employer contends that there was no legitimate basis for the administrative law judge to defer to Dr. Rizkalla's opinion on the basis of his status as autopsy prosector inasmuch as the reviewing pathologists performed microscopic evaluations of the autopsy tissue slides identical to that performed by Dr. Rizkalla. The administrative law judge, however, permissibly credited Dr. Rizkalla's opinion over the reports of the reviewing pathologists as he found that Dr. Rizkalla's opinion was well-reasoned and documented and that Dr. Rizkalla was in the best position to make a determination as to the cause of the miner's death.<sup>2</sup> Decision and Order at 12; see *Urgolites v. Bethenergy Mines, Inc.*, 17 BLR 1-20 (1992); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988) (*en banc*). Thus, the administrative law judge permissibly accorded determinative weight to the opinion of Dr. Rizkalla as autopsy prosector over the contrary opinions of Drs. Bush, Kleinerman, Naeye and Fino.<sup>3</sup> *Id.*;

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<sup>2</sup> In his deposition, Dr. Rizkalla explained in detail how his findings upon gross examination were supported by his findings upon microscopic examination, which lead to the conclusion that pneumoconiosis played a role in the miner's death. Director's Exhibit 51. Dr. Rizkalla stated that he concluded that the miner suffered from cor pulmonale based on his gross observations of the miner's heart. *Id.* at 17, 18. He indicated that he determined the presence of cor pulmonale by measuring the wall of the right and left ventricles and based the diagnosis of the disease on the abnormal thickness of the wall of the right ventricle. *Id.* at 18. He explained further that the lung sections, which showed the presence of thickened pulmonary vessels, supported his observations upon gross examination and confirmed the diagnosis of cor pulmonale. *Id.* at 18, 23. Dr. Rizkalla further stated that his review of the slides and the miner's medical records showed interstitial pulmonary disease secondary to the anthracosilicotic pigmentation in the lung parenchyma that would interfere with normal lung function. *Id.* at 48. He concluded that the miner's coal worker's pneumoconiosis, which was complicated by focal dust emphysema, cor pulmonale, and a heart that had myocardial fibrosis and atherosclerotic heart disease, was a substantial factor in accelerating the miner's death. *Id.* at 39-40. He further indicated that the coal workers' pneumoconiosis played a role in the miner's death by causing a pulmonary impairment that resulted in cor pulmonale. *Id.* at 41.

<sup>3</sup> The administrative law judge noted that the qualifications of the physicians rendering the relevant opinions herein were comparable. The administrative law

Employer's Exhibits 1, 2, 4-6; Director's Exhibits 49, 51.

We further reject employer's contention that the administrative law judge erred in crediting Dr. Rizkalla's report because the record does not support a finding that the miner suffered from cor pulmonale or that the miner's pneumoconiosis was of such a degree to contribute to his death. Contrary to employer's contention, the interpretation of the medical data is for the medical experts and the administrative law judge may not substitute his own conclusions regarding the medical evidence of record for those of the physician, see *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986); *Bogan v. Consolidation Coal Co.*, 6 BLR 1-1000 (1984).

The remainder of employer's arguments concerning the administrative law judge's decision to credit the medical opinion of Dr. Rizkalla over the contrary opinions are tantamount to a request to reweigh the evidence, which the Board is not empowered to do. *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). As it was within a reasonable exercise of his discretion, we affirm the administrative law judge's determination that the evidence of record is sufficient to establish that pneumoconiosis hastened the miner's death. 20 C.F.R. §718.205(c)(2); *Lukosevicz, supra*; see also *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Accordingly, the administrative law judge's Decision and Order - Awarding

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judge determined that Drs. Rizkalla, Naeye, Bush and Kleinerman are all Board-certified in Anatomical and Clinical Pathology. See Director's Exhibits 49, 51, 52; Employer's Exhibits 2, 6. In addition, the administrative law judge found that Dr. Fino is Board-certified in Internal Medicine with a subspecialty in Pulmonary Diseases. Employer's Exhibit 4.

Benefits is affirmed.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge