

BRB No. 97-1069 BLA

WINNIE L. HORSMAN)	
(Widow of ANTHONY HORSMAN))	
)	
Claimant-Petitioner))
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	DATE ISSUED:
CORPORATION)	
)	
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 George P. Morin, Administrative Law Judge, United States Department of Labor.

Donald C. Wandling (Avis, Witten & Wandling), Logan, West Virginia, for claimant.

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

PER CURIAM:

Claimant, widow of the deceased miner, appeals the Decision and Order (96-BLA-60) of Administrative Law Judge George P. Morin 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 Act). The administrative law judge found at least thirty-five years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.¹

¹ The miner died on July 12, 1994. Director's Exhibit 10. Claimant filed her claim for benefits on November 15, 1994. Director's Exhibit 1.

Decision and Order at 2. The administrative law judge concluded that the evidence of record was insufficient to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in failing to find that the miner's death was due to pneumoconiosis. Employer did not file a response brief. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he would not participate 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 law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932; *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 on a survivor's claim filed 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, pneumoconiosis. See 20 C.F.R. §§718.1, 718.205, 718.201; *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). Additionally, the United States Court of Appeals for the Fourth Circuit, within whose appellate jurisdiction this case arises, held in *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), that any condition that actually hastens the miner's death is a substantially contributing cause of death for purposes of Section 718.205(c).

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, in the instant case, rationally determined that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). There are three medical opinions of record. Drs. Naeye and Hansbarger found that pneumoconiosis did not contribute to the miner's death and that death was due to atherosclerotic heart disease. Employer's Exhibits 1, 2. Dr. DeLara found that pneumoconiosis was a contributing cause of death. Claimant's Exhibit 1. The death certificate and autopsy report list the cause of death as atherosclerotic heart disease with smoking and chronic lung disease as other significant conditions. Director's Exhibits 10, 11. Contrary to claimant's contention, the administrative law judge permissibly accorded more weight to Drs. Naeye and Hansbarger, than to Dr.

DeLara, based on their superior qualifications and as their opinions were better supported by the other evidence of record. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-26 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). 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 (1989). Consequently, we affirm the administrative law judge's denial in this survivor's claim as it is supported by substantial evidence and is in accordance with law. *Trumbo, supra*; *Neely, supra*.

Inasmuch as claimant has failed to establish that the miner's death was due to pneumoconiosis, a requisite element of entitlement for a survivor's claim pursuant to Part 718, entitlement thereunder is precluded. *Trumbo, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge