

BRB No. 11-0879 BLA

ETHEL BEGLEY)
(Widow of WILLIE BEGLEY))
)
 Claimant-Petitioner)
)
 v.)
)
 SANDY FORK MINING COMPANY) DATE ISSUED: 08/27/2012
)
 and)
)
 KENTUCKY COAL PRODUCERS')
 SELF-INSURANCE FUND)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order Denying Modification and Denying Benefits of Paul C. Johnson, Jr., Associate Chief Administrative Law Judge, United States Department of Labor.

Ethel Begley, Bear Branch, Kentucky, *pro se*.

Rodney E. Buttermore, Jr. (Buttermore & Boggs), Harlan, Kentucky, for employer.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel,² appeals the Decision and Order Denying Modification and Denying Benefits (2010-BLA-05201) of Associate Chief Administrative Law Judge Paul C. Johnson, Jr., rendered on a survivor's claim filed on March 1, 2004, 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).³ The relevant procedural history is as follows. In a Decision and Order issued on July 20, 2007, Administrative Law Judge Donald W. Mosser credited the miner with thirty-two years of coal mine employment and adjudicated this survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718. Director's Exhibit 72. Judge Mosser found that claimant established the existence of simple, clinical and legal pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), but that she failed to prove that the miner's death was due pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, Judge Mosser denied benefits. *Id.*

Claimant appealed and the denial was affirmed by the Board. *E.B. [Begley] v. Sandy Fork Mining Co.*, BRB No. 07-0925 BLA (July 29, 2008) (unpub.); Director's Exhibit 81. The Board subsequently denied claimant's motion for reconsideration. *E.B. [Begley] v. Sandy Fork Mining Co.*, BRB No. 07-0925 BLA (Oct. 15, 2008) (unpub. Order); Director's Exhibit 83. By Order dated January 21, 2009, the United States Court of Appeals for the Sixth Circuit dismissed claimant's appeal. Director's Exhibit 88.

Claimant filed a timely request for modification on June 22, 2009. Director's Exhibit 89. The district director denied claimant's modification request on October 14, 2009. Director's Exhibit 93. Claimant requested a hearing, and the case was assigned to Judge Johnson (the administrative law judge) for a formal hearing, which was held on July 12, 2010. Director's Exhibit 94. The administrative law judge issued his Decision and Order on Modification on September 7, 2011, which is the subject of this appeal.

¹ Claimant is the widow of the miner, Willie Begley, who died on September 8, 2000. Director's Exhibit 12.

² Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

³ Because this survivor's claim was filed before January 1, 2005, the recent amendments to the Act do not affect this case. *See* Pub. L. No. 111-148, §1556(c), 124 Stat. 119 (2010)(to be codified at 30 U.S.C. §§921(c)(4) and 932(l)).

The administrative law judge found that there was no mistake in a determination of fact with regard to the prior denial of benefits by Judge Mosser. The administrative law judge also reviewed the newly submitted evidence, in conjunction with the evidence before Judge Mosser, and found that it was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge found that claimant failed to establish a basis for modification pursuant to 20 C.F.R. §725.310, and he denied benefits.

On appeal, claimant generally challenges the administrative law judge's finding that the miner's death was not due to pneumoconiosis under 20 C.F.R. §718.205(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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). The Board 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.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Because this survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, where the miner's death was caused by complications of pneumoconiosis, or where the miner had complicated pneumoconiosis.⁵ 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993); *Neeley*, 11 BLR at 1-86; *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Where pneumoconiosis is not the cause of death, a miner's death will be considered to be due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). Pneumoconiosis is a "substantially

⁴ The record reflects that the miner's coal mine employment was in Kentucky. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

⁵ There is no evidence in the record to establish that the miner had complicated pneumoconiosis, for purposes of 20 C.F.R. §718.205(c)(3).

contributing cause” of the miner’s death if it hastened the miner’s death. 20 C.F.R. §718.205(c)(5); see *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993), *Griffith v. Director, OWCP*, 868 F.2d 847, 12 BLR 2-185 (6th Cir. 1989).

In order for claimant to establish a basis for modification in this survivor’s claim, filed before January 1, 2005, where the prior denial of benefits related to the miner’s condition and death, claimant must demonstrate that there was a mistake in a determination of fact in the prior decision. See 20 C.F.R. §725.310; *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989). The United States Court of Appeals for the Sixth Circuit has held that a claimant need not allege a specific error in order for an administrative law judge to find modification. *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230, 18 BLR 2-290, 2-996 (6th Cir. 1994). The administrative law judge has broad discretion to correct mistakes of fact, including the ultimate fact of entitlement. *Id.* The administrative law judge is authorized “to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted.” *O’Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971); see *King v. Jericol Mining, Inc.*, 246 F.3d 822, 22 BLR 2-305 (6th Cir. 2001).

In this case, the administrative law judge noted that at the time Judge Mosser denied benefits, the record consisted of the miner’s death certificate, authored by the miner’s treating physician, Dr. Yumang, who listed the cause of death as cardiopulmonary arrest due to or as a consequence of acute respiratory failure, acute pulmonary edema/chronic obstructive lung disease, and end stage coronary artery disease. Decision and Order Denying Modification and Denying Benefits (Modification Decision) at 4, see Director’s Exhibit 12. The administrative law judge noted that Judge Mosser also reviewed medical opinions by Drs. Yumang, Fino and Dahhan, and a discharge summary from St. Joseph Hospital. Modification Decision at 4-5. As noted by the administrative law judge, Dr. Yumang opined that the miner’s death was hastened by pneumoconiosis, while Drs. Fino and Dahhan opined that his death was unrelated to coal dust exposure. *Id.*

The administrative law judge agreed with Judge Mosser’s prior finding that the death certificate and Dr. Yumang’s opinion were insufficient to satisfy claimant’s burden of proof, as Dr. Yumang “did not offer any clinical findings, observations or facts to support his conclusions, but merely stated, in a one paragraph opinion, that the miner’s death was hastened by pneumoconiosis.” Modification Decision at 5. Further, the administrative law judge agreed with Judge Mosser that, while the miner’s treatment and hospitalization records detailed the miner’s “progressively deteriorating coronary artery disease and congestive heart failure,” those records “made no mention of how the miner’s [chronic obstructive pulmonary disease] contributed to or hastened death.” *Id.* Further, the administrative law judge agreed with Judge Mosser’s decision to accord controlling weight to Dr. Fino’s opinion, that the miner’s death was due to end stage coronary artery

disease and that pneumoconiosis did not hasten his death by coronary artery disease, because the doctor's opinion was reasoned and documented. *Id.* Thus, the administrative law judge concluded that there was no mistake in a determination of fact in Judge Mosser's prior denial of benefits, based on the record before him.

In addressing the newly submitted evidence on modification, the administrative law judge noted that claimant submitted a report by Dr. Cornett dated June 23, 2004. Modification Decision at 5. The administrative law judge noted that, while Dr. Cornett's medical report was listed on claimant's evidence summary before Judge Mosser, that report was not previously considered by Judge Mosser because he was unable to locate Dr. Cornett's report in the record. The administrative law judge reviewed Dr. Cornett's report and found that she diagnosed coal workers' pneumoconiosis and opined that the miner's "severe lung disease as well as his [coronary artery disease] contributed to [the miner's] heart failure." *Id.* The administrative law judge found that Dr. Cornett's opinion was not reasoned, as it did not contain any "objective medical tests, clinical findings, observations, or facts to support" the conclusions stated. *Id.* Because the administrative law judge determined that there was no reasoned and documented medical opinion in the record as a whole, to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), he concluded that claimant failed to demonstrate a mistake in a determination of fact under 20 C.F.R. §725.310. *Id.*

The Sixth Circuit has held that an administrative law judge has broad discretion to determine the credibility of a medical opinion based on the rationale provided by the physician. *See* 20 C.F.R. §718.104(d)(5); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003); *Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-117 (6th Cir. 1995). The administrative law judge is empowered to weigh the medical evidence and to draw his or her 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 Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

In this case, the administrative law judge properly considered all of the evidence before Judge Mosser and rationally found that there was no mistake in a determination of fact with regard to the prior denial of claimant's survivor's claim. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). Furthermore, the administrative law judge permissibly determined that Dr. Cornett's opinion was not reasoned and documented, and, thus, that claimant failed to establish, based on the newly submitted evidence, that the miner's death was due to pneumoconiosis under 20 C.F.R. §718.205(c). *See Odom*, 342 F.3d at 492, 22 BLR at 2-622; *Griffith*, 49 F.3d at 186, 19 BLR at 2-117; *see also Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-647-49 (6th Cir. 2003). Therefore, we affirm, as supported by substantial

evidence, the administrative law judge's finding that claimant failed to establish a basis for modification pursuant to 20 C.F.R. §725.310, and we affirm the denial of benefits.

Accordingly, the administrative law judge's Decision and Order Denying Modification and Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge