

BRB No. 98-0461 BLA

HELEN STREET	)	
(Widow of BUSTER STREET)	)	
	)	
Claimant-Petitioner	)	)
	)	
v.	)	
	)	
DOMINION COAL CORPORATION	)	DATE ISSUED:
	)	
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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Helen Street, Raven, Virginia, pro se.

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen), Washington, D. C., for employer.

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

PER CURIAM:

Claimant, widow of the deceased miner and without the assistance of counsel,<sup>1</sup> appeals the Decision and Order (97-BLA-295) of Administrative Law Judge Michael P. Lesniak denying benefits on the miner's and survivor's claims pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969,

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<sup>1</sup> Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. White is not representing claimant on appeal. See *Shelton v. Claude v. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge found twenty-one and one-quarter years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>2</sup> Employer conceded the existence of pneumoconiosis and the administrative law judge found a change in conditions established pursuant to 20 C.F.R. §725.310. The administrative law judge then considered both the prior and new evidence of record and found the evidence sufficient to establish pneumoconiosis arising out of coal mine employment and total disability pursuant to 20 C.F.R. §§718.203 and 718.204(c), but insufficient to establish total disability due to pneumoconiosis or death due to pneumoconiosis pursuant to 20 C.F.R. §§718.204(b) and 718.205(c). Accordingly, benefits were denied in both the miner's and the survivor's claims. On appeal, claimant generally contends that she is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. 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 applicable 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 the miner's claim pursuant to 20

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<sup>2</sup> The miner filed his claim for benefits on April 23, 1981. Director's Exhibit 1. The claim was finally denied on May 16, 1990. Director's Exhibit 87. The miner requested modification on July 24, 1990 pursuant to 20 C.F.R. §725.310. The miner died December 25, 1993. Director's Exhibit 93. Modification was finally denied on February 27, 1996. Director's Exhibits 87, 88. Claimant filed her survivor's claim April 2, 1996. Director's Exhibit 93. As the survivor's claim was filed within one year of the denial of the miner's claim, it was also considered a modification request in the miner's claim. Decision and Order at 1.

C.F.R. Part 718, claimant must establish that the miner suffered from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis was totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure of claimant 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). Additionally, 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, 725.201; *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). Moreover, 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. With respect to the miner's claim, the administrative law judge rationally found the evidence of record insufficient to establish total disability due to pneumoconiosis pursuant to Section 718.204(b). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge permissibly found that there was no evidence directly establishing that pneumoconiosis was a contributing cause to the miner's disabling respiratory condition and any inference of disability causation in the opinions of Drs. Bailey and Coogan was outweighed by Dr. Stewart's opinion of no impairment, in light of the physician's qualifications, as more thorough and supported by the opinions of Drs. Kleinerman and Green. *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Perry, supra*; Director's Exhibit 93; Claimant's Exhibit 1; Employer's Exhibits 1, 2; Decision and Order at 4. We therefore affirm the administrative law judge's finding that the evidence is insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) as it is supported by substantial evidence. *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

With respect to the survivor's claim, the administrative law judge rationally determined that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *Piccin, supra*. The death

certificate by Dr. Green lists immediate cause of death as refractory hypertension due to multisystem organ failure due to bilateral progressive pneumonia. Director's Exhibit 93. The autopsy by Dr. Coogan lists simple pneumoconiosis and moderate severe coronary artery disease and states that pneumoconiosis contributed to death. Claimant's Exhibit 1. Dr. Kleinerman diagnosed mild to moderate pneumoconiosis, opined that pneumoconiosis played no part in death, and that the cause of death was myocardial infarction. Employer's Exhibit 2. Dr. Bailey opined that pneumoconiosis contributed to death. Director's Exhibit 93. Dr. Stewart found no impairment and that pneumoconiosis played no role in the miner's death. Employer's Exhibit 1. The administrative law judge permissibly accorded greater weight to the opinion of Dr. Stewart, than to Drs. Bailey and Coogan, in light of his credentials as a board-certified pulmonary specialist and critical care specialist and as his opinion was also supported by the opinions of Drs. Kleinerman and Green. *Dillon, supra; Perry, supra; Decision and Order at 5.* 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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's denial of benefits in the survivor's claim as it is supported by substantial evidence and is in accordance with law. *Shuff, supra; Trumbo, supra; Neeley, supra.*

Inasmuch as claimant has failed to establish total disability due to pneumoconiosis and that the miner's death was due to pneumoconiosis, entitlement to benefits in both the miner's claim and the survivor's claim is precluded. *Trent, supra; Trumbo, supra.*

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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JAMES F. BROWN  
Administrative Appeals Judge