

BRB No. 00-0495 BLA

GRACE L. CORNETT)
(Widow of BILL CORNETT))
)
 Claimant-Petitioner)
)
 v.)
)
 CORNETT COAL COMPANY,)
 INCORPORATED)
)
 and)
)
 LIBERTY MUTUAL INSURANCE)
 GROUP)
)
 Employer/Carrier -) DATE ISSUED:
 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 Benefits of Joseph E. Kane,
Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

W. Barry Lewis (Lewis & Lewis), Hazard, Kentucky, for employer/carrier.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and
NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order (99-BLA-0808) of Administrative Law Judge Joseph E. Kane 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). After accepting the parties' stipulation of twenty-two years of coal mine employment, the administrative law judge considered the medical evidence of record and determined that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge further determined that even if pneumoconiosis were established, the preponderance of the evidence failed to demonstrate that the miner's death was 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 his consideration of the medical evidence pursuant to 20 C.F.R. §§718.202(a)(1), (4) and 718.205(c).² Employer/carrier responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director) has indicated that she will not participate in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718 in a claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor

¹Claimant is the surviving spouse of the miner, Bill Cornett, who died on June 8, 1998. Director's Exhibit 9.

²Claimant does not challenge the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(2), (3). These findings are therefore affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; *see Griffith [Myrtle] v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 135 (6th Cir. 1993); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

Claimant first contends that the administrative law judge erred in determining that the x-ray evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Claimant contends that the record consists of eleven x-ray interpretations which are positive for the existence of pneumoconiosis, and therefore support a finding of the disease, and the administrative law judge erred in relying upon the numerical superiority of the negative x-ray interpretations and the superior qualifications of the physicians making those interpretations to determine that claimant did not establish the existence of pneumoconiosis. Claimant's Brief at 4. Claimant further contends, without further explanation, that the administrative law judge may have "selectively analyzed" the x-ray evidence. *Id.* Claimant's contentions are without merit.

The administrative law judge found that the record contains eighty interpretations of thirty-two chest x-rays. Decision and Order at 17. The administrative law judge found that of the most probative interpretations,³ nine dually qualified-physicians read the miner's x-rays as negative on forty-nine occasions, while only four dually-qualified physicians read the miner's x-rays as positive on five occasions. *Id.* The administrative law judge further found that three B-readers read the miner's x-rays as negative on five occasions. *Id.* Relying on the numerical superiority of the negative interpretations by

³The administrative law judge accorded little evidentiary weight to the December 1, 1981, July 2, 1982, and June 15, 1982 x-rays as several highly qualified readers found these x-rays to be unreadable. Decision and Order at 17, footnote 7. With regard to the miner's June 8, 1998 x-ray, the administrative law judge found that it was deemed unreadable by a B-reader, but accorded weight to the negative interpretations of this film by two, dually qualified physicians. *Id.*

highly qualified physicians, the administrative law judge acted within his discretion in determining that claimant did not establish the existence of pneumoconiosis by x-ray evidence. *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990). We therefore reject claimant's contention that the administrative law judge committed error at Section 718.202(a)(1) and affirm his finding that claimant failed to establish pneumoconiosis at this subsection.

Claimant next contends that the administrative law judge erred in his consideration of the medical opinions pursuant to Section 718.202(a)(4). Claimant asserts that the administrative law judge erred in finding unreasoned the opinions of Drs. Baker, Anderson, Penman, Groggel, Clarke, Wright, Matheny, Becknell, Bushey, and Cornett, who opined that the miner suffered from pneumoconiosis; claimant contends that the opinions of these physicians were properly documented, and thus, should have been accorded determinative weight at Section 718.202(a)(4). Claimant's Brief at 5. The administrative law judge accorded the greatest weight to Dr. Broudy's June 27, 1984 medical opinion as it was based upon the most recent physical examination of the miner. Decision and Order at 18. The administrative law judge further found that Dr. Broudy's remaining two medical opinions, in addition to the opinions of Drs. O'Neill, Powell, Cornish, Fino and Dahhan, all board-certified internists who opined that the miner did not suffer from pneumoconiosis, are better supported by the objective medical evidence than the contrary opinions by Drs. Baker, Anderson, and Penman, who are also board-certified internists. Decision and Order at 18 - 19. Moreover, the administrative law judge determined that the opinions of Drs. Groggel, Clarke, Wright, Matheny, Becknell, and Bushey, that the miner had pneumoconiosis, were entitled to less weight as these physicians either had less expertise in internal and pulmonary medicine or their credentials were not contained in the record. Decision and Order at 19.

In addition, the administrative law judge found that Dr. Burki's December 20, 1998 medical report, Dr. Cornett's May 9, 1998 letter, and records from Christian Healthcare Services, Inc., and Mary Breckinridge Hospital have little or no probative weight because they are not well-documented or well-reasoned opinions in that they did not reveal the bases for their diagnoses. *Id.* Contrary to claimant's contention, the administrative law judge rationally found that the opinions by Drs. Broudy, O'Neill, Powell, Cornish, Fino, and Dahhan are better supported by the majority of the negative x-ray evidence, and non-qualifying blood gas and pulmonary function studies, and therefore, are better-reasoned medical opinions. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The administrative law judge also acted within his discretion in relying on the superior qualifications of these physicians to determine that their opinions were entitled to greater weight. *See Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990)(en banc recon.); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988).

As the administrative law judge permissibly weighed the medical opinion evidence, and his findings are supported by substantial evidence, we affirm his finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Lastly, claimant contends that the administrative law judge erred in his consideration of Dr. Cornett's opinion at Section 718.205(c). Claimant contends that the administrative law judge should have accorded determinative weight to the physician's opinion as she was the miner's treating physician for a substantial period of time. Claimant's Brief at 7 - 8. We disagree. The administrative law judge found that Dr. Cornett signed the death certificate, which listed the cause of death as acute myocardial infarction due to or as a consequence of coal worker's pneumoconiosis. Director's Exhibit 9. The administrative law judge further found that an emergency room record, signed by Dr. Cornett on the date of the miner's death, indicated the physician's initial impression and final diagnosis as acute myocardial infarction and cardiopulmonary arrest. Decision and Order at 20; Director's Exhibit 11. The administrative law judge acknowledged that he could accord greater weight to Dr. Cornett's opinion based on her status as the miner's treating physician, but because of the discrepancy in the emergency room form and the death certificate, the administrative law judge permissibly found that Dr. Cornett's reference to pneumoconiosis on the death certificate was unreasoned and conclusory. *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Clark, supra*; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(en banc), *aff'd sub nom. Director, OWCP v. Cargo Mining Co.*, Nos. 88-3531, 88-3578 (6th Cir. May 11, 1989)(unpub.). The administrative law judge further found that all of the other physicians who offered opinions on the cause of the miner's death opined that pneumoconiosis did not cause, substantially contribute to, or hasten the miner's death. Decision and Order at 20 -21; Employer's Exhibits 1- 4. Thus, the administrative law judge rationally concluded that the preponderance of the evidence failed to establish death due to pneumoconiosis pursuant to Section 718.205(c). *See Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Neeley, supra*; *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 of Utah, Inc.*, 12 BLR 1-111 (1989). Inasmuch as the administrative law judge properly considered the evidence pursuant to Sections 718.202(a)(1), (4) and 718.205(c), we affirm the denial of survivor's benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge