

BRB No. 97-0794 BLA

JEWELDENE BELCHER)	
(Widow of FRANK E. BELCHER))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BETHENERGY MINES, INCORPORATED)	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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Jeweldene Belcher, Elkhorn City, Kentucky, *pro se*.

Martin E. Hall (Jackson & Kelly), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant, widow of the deceased miner, appeals without the assistance of counsel, the Decision and Order (95-BLA-2362) of Administrative Law Judge Daniel L. Leland 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 twenty-two 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 718.¹ 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

¹ The miner died on August 24, 1994. Director's Exhibit 7. Claimant filed her claim for benefits on December 14, 1994. Director's Exhibit 1.

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.

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); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We 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 are 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 in 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); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

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). The administrative law judge properly determined that no medical opinion of record concluded that the miner's death was due to pneumoconiosis but rather establishes that the miner died as a result of pulmonary emboli due to carcinoma of the colon with metastases. Director's Exhibits 4, 5, 7-10, 22; Employer's Exhibits 1-3, 6, 8; Decision and Order at 5-6; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The administrative law judge permissibly accorded more weight to the physician's opinions that pneumoconiosis did not contribute or hasten the miner's death in light of their expertise and thoroughness of their opinions. *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge, further, rationally concluded that the death certificate, signed by Charles Morris, the Pike County Coroner, listing the cause of death as respiratory arrest due to colon cancer, with pneumoconiosis as a significant condition, was insufficient to meet claimant's burden of proof as Mr. Morris is not a physician and amended the death certificate upon his own review and interpretation of the autopsy report and at the request of the miner's family. Director's Exhibits 7, 8; Decision and Order at 5; *Piccin, supra*.

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 as it is supported by substantial evidence and is in accordance with law. *Brown, supra*. Inasmuch as claimant 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

NANCY S. DOLDER
Administrative Appeals Judge