

BRB No. 00-0555 BLA

KAROL GEIGER	)	
(Widow of JOSEPH GEIGER)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of John C. Holmes, Administrative Law Judge, United States Department of Labor.

Karol Geiger, New Market, Maryland, *pro se*.

Jeffrey S. Goldberg (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying

---

<sup>1</sup> Claimant, Karol Geiger, is the widow of the miner, Joseph Geiger, and is pursuing both her survivor's claim and the miner's claim. The miner filed his claim on October 5, 1992. Director's Exhibit 1. The Department of Labor (DOL) denied the claim on March 12, 1993 and July 20, 1993, based on the miner's failure to establish any element of entitlement. Director's Exhibits 22, 25. The miner died on December 30, 1993, before a hearing was held. Claimant informed DOL that she wished to pursue the miner's claim as well as her survivor's claim, filed on August 15, 1994. Director's Exhibits 31, 35. The consolidated claims were administratively denied on January 25, 1995 and August 25, 1995. Director's Exhibits 46, 47. A hearing was held before Administrative Law Judge Jeffrey Tureck, who

Benefits (99-BLA-1322) of Administrative Law Judge John C. Holmes ( the administrative law judge) on a 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 to nine years of coal mine employment, the administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) in both the miner's and survivor's claims. Accordingly, benefits were denied. Claimant appeals, generally challenging the administrative law judge's findings at Section 718.202(a)(1)-(4). The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence.

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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 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 in accordance with law. 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 benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment, that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that death was caused by complications of pneumoconiosis. *See* 20 C.F.R. §§718.202(a),

---

denied benefits on December 1, 1997. Director's Exhibit 52. Claimant appealed, and in light of the Director's concession that DOL failed to provide the miner with a complete, credible, pulmonary evaluation as required by the Act, the Board vacated the denial of benefits in both the miner's and survivor's claims, and remanded the case to the district director for further development of the evidence. *See Geiger v. Director, OWCP*, BRB No. 98-0443 BLA (Dec.16, 1998)(unpub.).

<sup>2</sup> Since the miner's last coal mine employment took place in Pennsylvania, the Board will apply the law of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

718.203, 718.205(c); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); *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). The United States Court of Appeals for the Third Circuit has held that any condition that hastens the miner's death is a substantially contributing cause of death for purposes of Section 718.205(c)(2). See *Lukosevicz, supra*.

Initially, we note that this is the second time this case has been on appeal to the Board. The Board previously affirmed Administrative Law Judge Jeffrey Tureck's finding that the weight of the evidence was negative for the existence of pneumoconiosis. Inasmuch as no new x-ray readings have been introduced on remand, our affirmance of Judge Tureck's determination that the x-ray evidence was insufficient to establish the existence of pneumoconiosis constitutes the law of the case. See *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

Likewise, at Section 718.202(a)(4) the Board previously affirmed Judge Tureck's findings regarding the medical opinions of record. The Board affirmed the administrative law judge's rejection of Dr. Ambroz's opinions as they were ambiguous, cursory and did not definitively attribute the miner's condition to coal mine employment. *Geiger*, slip. op. at 4. The Board also held that Judge Tureck had properly found that Dr. Spagnolo's opinion, that the miner did not have pneumoconiosis, added little to the record because it was based on a review of the x-ray evidence and on Dr. Ambroz's 1993 report. Pursuant to the Director's request, the Board remanded the miner's claim to the district director to permit the introduction of additional medical opinion evidence addressing whether the miner's coal mine employment contributed to his respiratory disability. Moreover, in light of the Director's concession that the Department of Labor failed to provide the miner with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate the miner's claim, as required by the Act, the Board vacated the denial of benefits in both the miner's and survivor's claims, and remanded the case to the district

---

<sup>3</sup> Further, the administrative law judge correctly determined that the record contained five x-rays which were read nine times. Director's Exhibits 17, 18, 19, 41, 42, 43, 44. The administrative law judge permissibly found that claimant failed to establish the existence of pneumoconiosis by a preponderance of the x-ray evidence, since he found eight of the nine x-ray interpretations of record negative. The administrative law judge also found that the single positive reading was outweighed by the negative readings of dually qualified readers. See 20 C.F.R. §718.202(a)(1); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

<sup>4</sup> The Board also previously affirmed Judge Tureck's findings under Section 718.202(a)(2), (3) as there was no evidence relevant to these Sections in the record. 20 C.F.R. §718.202(a)(2), (3).

director for further development of the evidence.

In considering the claims after the submission of additional evidence, the administrative law judge properly found, after considering the x-ray evidence and the credentials of the physicians who read the x-rays, that the existence of pneumoconiosis was not established. 20 C.F.R. §718.202(a)(1); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); see *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). Regarding the medical opinion evidence, the administrative law judge properly accorded greatest weight to the opinion of Dr. Michos, which found that the miner did not have pneumoconiosis, as it was the most thoroughly explained and best supported opinion of record, *i.e.*, it was based not only on the x-ray evidence, but the pattern of impairment revealed by the pulmonary function study and blood gas study results, and the miner's smoking and employment histories. See *Church v. Eastern Associated Coal Co.*, 20 BLR 1-8 (1996); *Carson v. Westmoreland Coal Co.*, 19 BLR 1-16 (1994); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); see also *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1998); *Griffith v. Director, OWCP*, 49 F.3d 189, 19 BLR 2-111 (6th Cir. 1995); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*). The administrative law judge properly accorded little weight to the opinions of Drs. Wolfe, Ambroz and Spagnolo as he found them to be conclusory. See *Clark, supra*; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Hopton v. United States Steel Corp.*, 7 BLR 1-12 (1984); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983). Thus, we affirm the administrative law judge's finding with respect to the medical opinion evidence at Section 718.202(a)(4). We, therefore, affirm the finding of the administrative law judge that the evidence of record was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4) as it is supported by substantial evidence. See *Williams, supra*.

As claimant has failed to establish the existence of pneumoconiosis, she has failed to establish one of the essential elements of entitlement at 20 C.F.R. Part 718. Thus, the administrative law judge properly denied benefits in both the miner's and survivor's claims. See *Trumbo, supra*; *Trent, supra*; *Perry, supra*.

Accordingly, the administrative law judge's Decision and Order Denying Benefits in the miner's and survivor's claims is affirmed.

SO ORDERED.

---

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

REGINA C. McGRANERY  
Administrative Appeals Judge