

BRB No. 98-0617 BLA

CLETA BOWMAN)
(Widow of PAUL BOWMAN))
)
 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 of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Cleta Bowman, Springfield, Kentucky, *pro se*.

Gary K. Stearman (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, BROWN, Administrative Appeals Judge and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, widow of the deceased miner and without the assistance of counsel, appeals the Decision and Order (96-BLA-1041) of Administrative Law Judge Daniel J. Roketenetz 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, and the parties stipulated to, at least eleven years of coal mine employment and based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.¹ Decision and Order at 3. The

¹ The miner filed a claim for benefits on August 8, 1979, which was denied by the Department of Labor on December 18, 1979. Director's Exhibit 29. The miner

administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.205(c). Accordingly, benefits were denied. On appeal, claimant generally contends that she is entitled to benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

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(a); *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 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, by 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, permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(1) as the preponderance of the x-rays were read as negative by physicians with superior qualifications. Director's Exhibits 20, 22

died August 29, 1993. Director's Exhibit 8. Claimant filed the instant claim for benefits on May 26, 1994, which was denied by the district director on February 1, 1995, July 5, 1995 and July 15, 1995. Director's Exhibits 2, 13, 14, 27.

24-26, 29; Decision and Order at 6; *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). The administrative law judge also properly found the evidence insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and (3) as there is no biopsy or autopsy of record and there is no evidence of complicated pneumoconiosis in the record in this claim filed after January 1, 1982. See 20 C.F.R. §§718.202(a)(2), (3), 718.304, 718.305, 718.306; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986); Director's Exhibit 16; Decision and Order at 6.

Further, the administrative law judge considered the entirety of the medical opinion evidence and permissibly accorded greater weight to the opinions of Drs. Sebastian and Broudy, finding no pneumoconiosis, than to Dr. Henderickson's opinion, that chronic obstructive pulmonary disease could have been related to coal mine employment, as Dr. Henderickson's opinion is equivocal. Director's Exhibits 22, 23, 29; Decision and Order at 8; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). 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 Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a) as it is supported by substantial evidence and is in accordance with law. Inasmuch as the existence of pneumoconiosis has not been established, entitlement to benefits in this survivor's claim 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

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge