

BRB No. 02-0131 BLA

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| ROXIE MABE |) | | |
| (Widow of CLINT MABE) |) | | |
| |) | | |
| Claimant-Petitioner |) | | |
| |) | | |
| v. |) | | |
| |) | | |
| WESTMORELAND COAL COMPANY) |) | 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 F. Solomon, Administrative Law Judge, United States Department of Labor.

Roxie Mabe, Appalachia, Virginia, *pro se*.

Kathy L. Snyder (Jackson & Kelly, PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant, the miner's widow and without the assistance of counsel,¹ appeals the Decision and Order (2001-BLA-0479) of Administrative Law Judge Daniel F. Solomon 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).² The administrative law judge noted that claimant alleged thirty-seven years of coal mine employment. Decision and Order at 3. Considering entitlement in this survivor's claim pursuant to the provisions of 20 C.F.R. Part 718, the administrative law judge, after reviewing all of the relevant evidence of record, concluded that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205.³ Decision and Order at 3-14.

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

²The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³The record indicates that the miner, Clint Mabe, filed a claim for benefits on April 13, 1972, which was denied on February 11, 1976. Director's Exhibit 37. The miner died on November 27, 1998, and claimant filed her survivor's claim, the subject of the instant appeal, on March 7, 2000. Director's Exhibits 1, 6, 11.

Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer responds urging affirmance of the administrative law judge's Decision and Order as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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). If the findings of fact and conclusions of law of the administrative law judge 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 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 arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. See 20 C.F.R. §§718.1, 718.202, 718.203, 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). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. See 20 C.F.R. §718.205(c)(5); see also *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S. Ct. 969 (1993).⁴

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 properly considered the entirety of the relevant medical opinion evidence of record and rationally found that the

⁴This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner was employed in the coal mine industry in the Commonwealth of Virginia. See Director's Exhibit 4; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205. See *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, BLR 2-(4th Cir. 2000); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983).

The relevant evidence of record concerning the cause of death consists of four medical opinions, a death summary and the death certificate. Dr. Paranthaman, the miner's treating physician, did not indicate that coal dust exposure contributed to or hastened the miner's death. Employer's Exhibit 3. Drs. Castle, Morgan and Fino opined that the miner's death was not contributed to or hastened by coal workers' pneumoconiosis or any other occupational lung disease and explained that the miner died of complications due to coronary artery disease. Employer's Exhibits 3, 4, 6. The death summary, signed by Dr. Gash, did not indicate that pneumoconiosis caused or hastened the miner's death. Director's Exhibit 11. The death certificate, signed by Dr. Cox, the miner's attending physician, listed the cause of death as ischemic cardiomyopathy with arteriosclerotic coronary artery disease as an underlying cause of death and renal insufficiency as a significant condition contributing to death. Director's Exhibits 6, 11. The administrative law judge properly considered this evidence and rationally concluded that it was insufficient to establish claimant's burden of proof pursuant to 20 C.F.R. §718.205 as it does not indicate that the miner's death was in any way related to pneumoconiosis.⁵ See *Shuff, supra*; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Director's Exhibits 6, 7, 11; Employer's Exhibits 3, 4, 6; Decision and Order at 14. 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)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Furthermore, since the determination of whether the miner's death is due to pneumoconiosis is primarily a medical determination, claimant's testimony alone, under the circumstances of this case, could not alter the administrative law judge's findings and therefore could not satisfy claimant's burden of proof on this issue. See 20 C.F.R. §718.205; *Salyers v. Director, OWCP*, 12 BLR 1-193 (1989); *Anderson, supra*; *Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985); *Matteo v. Director, OWCP*, 8 BLR 1-200 (1985). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205 as it is supported by substantial evidence and is in accordance with law. See *Shuff, supra*; *Neeley, supra*; *Trumbo, supra*.

⁵The administrative law judge properly found that the presumption at 20 C.F.R. §718.304 is not applicable in this case as the record indicates that there is no evidence of complicated pneumoconiosis contained therein. See 20 C.F.R. §718.205(c)(3); Decision and Order at 7.

Inasmuch as claimant has failed to establish that the miner's death was due to pneumoconiosis, a requisite element of entitlement in a survivor's claim pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded and we need not address the administrative law judge's findings regarding the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *See Shuff, supra; Trumbo, supra; Neeley, supra.*

Accordingly, the administrative law judge's Decision and Order denying benefits in this survivor's claim is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge