

BRB No. 02-0132 BLA

DORSIA LAKIN)	
(Widow of SAMUEL LAKIN))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BETTY B. COAL)	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 on Remand of Daniel F. Sutton,
Administrative Law Judge, United States Department of Labor.

Dorsia Lakin, Clintwood, Virginia, *pro se*.

Michael F. Blair (Penn, Stuart & Eskridge), Abingdon, Virginia, for
employer.

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

PER CURIAM:

Claimant, the miner's widow and without the assistance of counsel,¹ appeals the
Decision and Order on Remand (1999-BLA-00145) of Administrative Law Judge Daniel F.

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).

Sutton denying benefits on claims² filed by the miner and survivor 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).³ This case has been before the Board previously. In the original decision, the administrative law judge found, and the parties stipulated to, thirteen years of coal mine employment. Decision and Order dated February 9, 2000 at 5. Based on their respective filing dates, the administrative law judge adjudicated the claims pursuant to the provisions of 20 C.F.R. Part 718 and concluded that the record indicated that the miner's modification request was untimely filed and that although the evidence of record was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment, it was insufficient to establish that the miner's death was due to pneumoconiosis. Decision and Order dated February 9, 2000 at 3, 5-7. Accordingly, benefits were denied in both claims. On appeal, the Board affirmed the administrative law judge's determination that the miner's modification request was untimely and his findings pursuant to 20 C.F.R. §§718.202(a) and 718.203 (2000) in the survivor's claim. The Board vacated, however, the administrative law judge's findings pursuant to 20 C.F.R. §718.205 (2000) and remanded the case for further consideration of the relevant evidence of record and to address the miner's second claim pursuant to 20 C.F.R. §725.309 (2000) as it was not properly withdrawn and

²Claimant is Dorsia Lakin, the miner's widow. The miner, Samuel Lakin, initially filed for benefits on July 25, 1994, which was finally denied on October 12, 1994, as he failed to show that he was totally disabled by pneumoconiosis. Director's Exhibits 1, 13. The miner filed his current application for benefits on July 29, 1996. Director's Exhibit 29. The miner died on June 3, 1997 and claimant filed a survivor's claim on September 19, 1997. Director's Exhibits 1A, 14A.

³The 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.

therefore constituted a duplicate claim. *Lakin v. Betty B. Coal*, BRB No. 00-0585 BLA (March 26, 2001)(unpublished).

On remand, the administrative law judge properly found that the miner's prior claim was denied as he failed to establish that he was totally disabled due to pneumoconiosis. Decision and Order on Remand at 4; Director's Exhibit 13. The administrative law judge noted the proper standard, found that the newly submitted evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4) (2000) and concluded that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). Decision and Order on Remand at 4-6. Accordingly, benefits were denied in the miner's claim. With respect to the survivor's claim, the administrative law judge considered the relevant evidence of record and concluded that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis. Decision and Order on Remand at 7-10. Accordingly, the administrative law judge denied benefits on both claims. On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond in the instant 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 in the miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner suffered from pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis was totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to prove any of these requisite elements compels a denial of benefits. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Additionally, 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 on Remand, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge’s Decision and Order is supported by substantial evidence and contains no reversible error therein. The administrative law judge, within his discretion as fact-finder, rationally determined that the evidence of record was insufficient to establish that the miner suffered from a totally disabling respiratory impairment or that his death was due to pneumoconiosis pursuant to 20 C.F.R. §§718.204 and 718.205 (2000). *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983).

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 2; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

The administrative law judge, in addressing the miner's duplicate claim in the instant case, permissibly determined that the newly submitted evidence of record was insufficient to establish total disability pursuant to Section 718.204(c) (2000), and therefore was insufficient to establish a material change in conditions pursuant to Section 725.309 (2000). *See Kuchwara, supra; Piccin, supra*. The administrative law judge properly found that total disability was not established pursuant to Section 718.204(c)(1)-(3) (2000) as all of the newly submitted pulmonary function studies and valid blood gas studies of record produced non-qualifying values⁵ and there is no evidence of cor pulmonale with right sided congestive heart failure in the record. *See* 20 C.F.R. §718.204(c)(1)-(3) (2000); Director's Exhibits 18, 19, 22, 42; Decision and Order on Remand at 5-6; *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989); *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). The administrative law judge rationally determined that the blood gas study dated December 2, 1994 was insufficient to meet claimant's burden as Dr. Michos concluded that this study was invalid for a determination of total disability since the test was not reflective of the miner's true baseline as he had been hospitalized for an acute myocardial infarction and congestive heart failure at the time the testing was conducted. *See* Decision and Order on Remand at 6; Director's Exhibits 18, 19; *Trent, supra; Revnack v. Director, OWCP*, 7 BLR 1-771 (1985); *Kuchwara, supra*. Further, the administrative law judge properly found that the record contained no newly submitted medical opinion indicating that the miner was totally disabled by a respiratory or pulmonary condition. *See* Decision and Order on Remand at 6; *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986) (*en banc*), *aff'd on recon. en banc*, 9 BLR 1-104 (1986); *Gee, supra; Perry, supra; Piccin, supra*. The administrative law judge must determine the credibility of the evidence of record and the weight to be accorded this evidence when deciding whether a party has met its burden of proof. *See Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986). Consequently, we affirm the administrative law judge's findings that the newly submitted evidence of record is insufficient to establish total disability pursuant to Section 718.204(c) (2000) and that therefore claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000) as they are supported by substantial evidence and in accordance with law.⁶ Inasmuch as claimant has failed to establish a material change in conditions in the miner's duplicate claim, entitlement

⁵A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

⁶The administrative law judge properly determined 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. §718.304; Decision and Order on Remand at 4.

thereunder is precluded. *See Lisa Lee Mines v. Director, OWCP* [Rutter], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).

With respect to the survivor's claim, the administrative law judge, in accordance with the Board's remand instructions in the instant case, properly considered the entirety of the relevant medical opinion evidence of record and rationally found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(2000). *Piccin, supra*. The relevant evidence of record concerning the cause of death consists of three medical opinions and the autopsy report. Dr. Naeye, who is a professor of pathology at the Pennsylvania State University College of Medicine, opined that the miner suffered from mild simple coal workers' pneumoconiosis but concluded that the miner's death was solely due to the complications of arteriosclerotic coronary artery disease which did not have an occupational origin. Director's Exhibit 11A. Dr. Abrenio, the autopsy prosector, diagnosed simple coal workers' pneumoconiosis as well as multiple pulmonary and cardiac conditions, all of which he stated contributed to the immediate cause of the miner's death.⁷ Director's Exhibit 10A. Dr. Caffrey, who is board-certified in anatomical and clinical pathology, diagnosed simple coal workers' pneumoconiosis and opined that it did not cause or hasten the miner's death. Employer's Exhibit 1. Dr. Klinerman, who is board-certified in anatomical and clinical pathology, concluded that the miner had simple coal workers' pneumoconiosis but opined that the miner's death was due to cardiac arrhythmia and ventricular fibrillation and neither coal dust or the simple coal workers' pneumoconiosis caused, contributed to or hastened the miner's death. Employer's Exhibit 2.

The administrative law judge, in the instant case, 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 (2000). The administrative law judge permissibly determined that the only opinion supportive of claimant's burden, that of Dr. Abrenio, is an unexplained

⁷Dr. Abrenio's final diagnosis included simple coal workers' pneumoconiosis, severe pulmonary congestion and edema, marked early bronchopneumonia, mild to moderate centrilobular emphysema, pleural fibrosis, old myocardial infarction, severe atherosclerosis and calcification of right and left coronary arteries, and cardiomegaly. In addition to the conditions listed in his final diagnosis, his microscopic findings also included mild interstitial fibrosis, no progressive massive fibrosis, mild coal workers' pneumoconiosis, early bronchopneumonia, severe pulmonary congestion and edema consistent with congestive heart failure which is secondary to the miner's previous myocardial infarction including that of cardiomegaly with left and right ventricular hypertrophy. Based upon these findings, Dr. Abrenio stated that superimposed on the congestive heart failure was early bronchopneumonia and then concluded that "all of these contributed to the immediate cause of death." Director's Exhibit 10A.

statement, which without more, was insufficient to sustain claimant's burden of proof. *See Shuff, supra; Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Perry, supra; Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Kuchwara, supra; Piccin, supra*; Decision and Order on Remand at 10; Director's Exhibits 10A, 11A; Employer's Exhibits 1, 2. Whether a medical report is sufficiently documented and reasoned is for the administrative law judge as the fact-finder to decide. *See Clark, supra; Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge, in this instance, rationally considered the quality of the evidence in determining whether the opinions of record are supported by the underlying documentation and adequately explained. *See Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Trumbo, supra; Clark, supra; Dillon, supra; Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Fields, supra; Perry, supra; Lucostic, supra; Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984); Decision and Order on Remand at 8-10; Director's Exhibits 10A, 11A; Employer's Exhibits 1, 2. Additionally, although Dr. Abrenio performed the autopsy, the administrative law judge has provided valid reasons for finding his opinion insufficient to meet claimant's burden of proof. *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, BLR 2- (4th Cir. 2000); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Clark, supra; Fields, supra; Hall v. Director, OWCP*, 8 BLR 1-193 (1985); *Hutchens, supra; Kuchwara, supra*; Decision and Order on Remand at 10; Director's Exhibits 10A, 11A; Employer's Exhibits 1, 2.

Claimant has the general burden of establishing entitlement and bears the risk of non-persuasion if her evidence is found insufficient to establish a crucial element. *See Trumbo, supra; Haduck, supra; Boyd, supra; Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *White v. Director, OWCP*, 6 BLR 1-368 (1983). As the administrative law judge rationally found the evidence insufficient to establish a material change in conditions in the miner's claim and that the evidence in the survivor's claim, indicating that the miner's death was due to pneumoconiosis, was not credible, claimant has not met her burden of proof on all the elements of entitlement. *Rutter, supra; Trumbo, supra; Haduck, supra; Boyd, 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, supra; Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Furthermore, since the determination of whether the miner's total disability and death are 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 these issues. *See 20 C.F.R. §§718.204(d), 718.205 (2000); Salyers v. Director, OWCP*, 12 BLR 1-193 (1989); *Anderson, supra; Tucker v. Director, OWCP*, 10 BLR 1-35

(1987); *Fields, supra*; *Trent, supra*; *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 findings that the evidence of record is insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000) in the miner's claim and that the miner's death was due to pneumoconiosis pursuant to Section 718.205 (2000) in the survivor's claim as they are supported by substantial evidence and are in accordance with law. *See Rutter, supra*; *Shuff, supra*; *Neeley, supra*; *Trumbo, supra*.

Inasmuch as claimant has failed to establish that the miner was totally disabled and that the miner's death was due to pneumoconiosis, requisite elements of entitlement in the instant claims filed by a miner and a survivor pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded. *See Shuff, supra*; *Trumbo, supra*; *Kneel v. Director, OWCP*, 11 BLR 1-85 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Trent, supra*; *Perry, supra*.

Accordingly, the administrative law judge's Decision and Order denying benefits in both the miner's and survivor's claims is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge