

BRB No. 05-0191 BLA

WILMA S. SAYLOR)
(Widow of FRANKLIN W. SAYLOR))
)
 Claimant-Petitioner)
)
 v.)
)
 CLINCHFIELD COAL COMPANY)
) DATE ISSUED: 07/07/2005
 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 Denying Survivor's Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Wilma S. Saylor, Pennington Gap, Virginia, *pro se*.

Anne L. Musgrove (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Survivor's Benefits (03-BLA-6261) of Administrative Law Judge Thomas M. Burke rendered 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). The administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718¹ and found

¹ The miner died on March 18, 2002. Director's Exhibit 3. Claimant filed her claim for survivor's benefits on August 16, 2002, which was denied by the district director. Director's Exhibits 3, 28. Claimant requested a hearing and the case was

that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §§718.202(a). Accordingly, benefits were denied.

On appeal, claimant generally contends that the evidence is sufficient to establish death due to pneumoconiosis. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs has indicated that he will 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. *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *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 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).

To establish entitlement to survivor's benefits, 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 pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); see *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). For survivor's claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or if the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Bill Branch Coal Co. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert denied*, 506 U.S. 1050 (1993).

After consideration of the administrative law judge's Decision and Order, the issues 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 contains no reversible error. The administrative law judge rationally found that the x-ray evidence of

transferred to the Office of Administrative Law Judges on July 9, 2003. Director's Exhibits 30, 35. A hearing was held before the administrative law judge on December 9, 2003.

record was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) as all of the x-rays of record, including the readings by dually qualified physicians, were interpreted as negative for pneumoconiosis.² 20 C.F.R. §718.202(a)(1); *Adkins v. Director, OWCP*, 958 F.2d 49, 6 BLR 2-61 (4th Cir. 1992); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); Director’s Exhibits 14 – 16, 27; Decision and Order at 5-6.

The administrative law judge next considered the autopsy evidence pursuant to Section 718.202(a)(2). The administrative law judge determined that Dr. Naeye found an insufficient amount of fibrosis associated with the black pigment he observed on the autopsy slides to qualify for a diagnose of coal workers’ pneumoconiosis, and that Dr. Caffrey noted a mild to moderate level of anthracotic pigment on the autopsy slides, but did not find any lesions of simple coal workers’ pneumoconiosis. Decision and Order at 6 – 7; Employer’s Exhibits 1, 2. The administrative law judge found that these opinions outweighed that of the autopsy prosector, Dr. Ricardo, who concluded that the miner had suffered from anthracosis and simple coal workers’ pneumoconiosis. Director’s Exhibits 12, 16. The administrative law judge permissibly found that Dr. Ricardo’s gross and microscopic descriptions of the lung tissue did not support his diagnosis because Dr. Ricardo found “no fibrotic nodules” and did not further explain whether the perivascular fibrous tissue he saw was due to the carbon depositions he found or was due to some other process in the lungs. 20 C.F.R. §718.201; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Decision and Order at 7. Thus, we affirm the administrative law judge’s finding that the preponderance of the autopsy evidence does not support a finding of pneumoconiosis pursuant to Section 718.202(a)(2).

Lastly, the administrative law judge considered the medical opinions pursuant to Section 718.202(a)(4).³ The administrative law judge properly found that Dr. Smiddy diagnosed obesity, sleep apnea, hypertension, and diabetes, and that although Dr. Smiddy initially indicated that he anticipated “significant pneumoconiosis”, he later withdrew that diagnosis because a radiologist did not document pneumoconiosis on a September 16,

² The administrative law judge did not consider x-rays taken between September 16, 1993 and September 24, 1998, submitted by claimant’s husband in his application for benefits in a living miner’s claim. This error does not require remand, however, as these x-rays interpretations were negative for pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); Director’s Exhibit 1.

³ The administrative law judge’s failure to consider medical opinion evidence submitted in conjunction with the miner’s claim is harmless as the reports do not contain a diagnosis of pneumoconiosis. *Larioni*, 6 BLR at 1-1278; Director’s Exhibit 1.

1993 chest x-ray. Decision and Order at 8–9; Director’s Exhibit 14. The administrative law judge properly determined that none of the other medical opinions of record contain a diagnosis of a respiratory impairment arising out of coal mine employment. Decision and Order at 9; Director’s Exhibits 11, 14, 16; Employer’s Exhibits 2, 3.

The administrative law judge is empowered to weigh the medical evidence of record and 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 if the administrative law judge’s findings are supported by substantial evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989). Because the administrative law judge’s findings are supported by substantial evidence,⁴ we affirm his determination that claimant has not established entitlement to benefits.

⁴ The administrative law judge did not consider whether pneumoconiosis could be established pursuant to 20 C.F.R. §718.202(a)(3), however, the presumptions contained in that subsection are inapplicable in the instant case.

Accordingly, the administrative law judge's Decision and Order Denying Survivor's Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge