

BRB No. 02-0133 BLA

NORMA JEAN PARSONS)		
(Widow of BILLY J. PARSONS))		
)		
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 Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Norma Jean Parsons, Big Stone Gap, Virginia, *pro se*.

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

Before: SMITH, HALL and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow and without the assistance of counsel,¹ appeals the Decision and Order (2000-BLA-00800) of Administrative Law Judge Mollie W. Neal denying benefits on a survivor's claim filed pursuant to the provisions of Title IV of the

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).

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 found, and employer conceded to, the existence of simple coal workers' pneumoconiosis. Decision and Order at 3, 8. Considering entitlement in this survivor's claim pursuant to the provisions of 20 C.F.R. Part 718, the administrative law judge determined that the only issue to be resolved was whether the miner's death was due to pneumoconiosis.³ Decision and Order at 3. The administrative law judge, after reviewing all of the relevant evidence of record, concluded that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Decision and Order at 3-8. Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in failing to find that the miner's death was due to pneumoconiosis. 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).

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, Billy J. Parsons died on June 2, 1998, and claimant filed her survivor's claim, the subject of the instant appeal, on April 26, 1999. Director's Exhibits 1, 6, 7.

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 evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205. *See Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The relevant evidence of record concerning the cause of death consists of seven medical opinions and the death certificate. Dr. Naeye, who is board-certified in both anatomic and clinical pathology, 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. Director's Exhibits 9, 45. Dr. Zayed, the miner's treating physician, wrote a letter stating that the miner's death resulted from a possible acute myocardial infarction and opined that black lung with chronic lung disease, either could cause respiratory arrest and could lead to a fatal ventricular arrhythmia or as a co-morbid condition could contribute to this condition. Director's Exhibit 11. 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. Director's Exhibit 45. Dr. Dahhan, who is board-certified in internal and pulmonary medicine, concluded that the miner had simple coal workers' pneumoconiosis but opined that

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 miner's death was due to cardiac arrhythmia and complicating coronary artery disease with no contribution from coal workers' pneumoconiosis. Employer's Exhibit 1. The death certificate, signed by Dr. Zayed, listed the cause of death as ventricular fibrillation due to acute myocardial infarction due to coronary artery disease. Director's Exhibit 7. Dr. Morgan diagnosed mild coal workers' pneumoconiosis and opined that this condition did not affect the miner's lung function or hasten his death. Employer's Exhibit 2. Dr. Fino, who is board-certified in internal and pulmonary medicine, opined that coal dust played no role in the miner's death. Employer's Exhibits 3, 6. Dr. Castle, who is board-certified in internal and pulmonary medicine, opined that the miner suffered a cardiac death related to coronary artery disease and acute myocardial infarction and it was not related to his underlying pneumoconiosis at all. Employer's Exhibits 4, 5.

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. The administrative law judge permissibly determined that the only opinion supportive of claimant's burden, that of Dr. Zayed, is not reasoned, documented and not specific to the miner's case. *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 v. Director, OWCP*, 7 BLR 1-167 (1984); *Piccin, supra*; Decision and Order at 8; Director's Exhibits 7, 9-11, 45; Employer's Exhibits 1-6. 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; Wetzel, supra; Lucostic, supra; Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984); Decision and Order at 8; Director's Exhibits 7, 9, 11, 45; Employer's Exhibits 1-6. Additionally, although Dr. Zayed was the miner's treating/attending physician, the administrative law judge has provided valid reasons for finding his opinion insufficient to meet claimant's burden of proof.⁵ *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); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th

⁵The 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.

Cir. 1993); *Clark, supra*; *Fields, supra*; *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); *Wetzel, supra*; *Hutchens, supra*; *Kuchwara, supra*; *Piccin, supra*; Decision and Order at 8; Director's Exhibits 10, 11.

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 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. *Trumbo, supra*; *Haduck, supra*; *Boyd, supra*. The administrative law judge is empowered to weigh the medical evidence and to draw her 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 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); *Fields, 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 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*.

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. *See Shuff, supra*; *Trumbo, supra*; *Kneel v. Director, OWCP*, 11 BLR 1-85 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge