

BRB Nos. 01-0665 BLA

PAMELA SUE STAMBAUGH )  
(Widow of SAMUEL STAMBAUGH) )  
 )  
 Claimant-Petitioner )  
 )  
 v. ) DATE ISSUED:  
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 REBEL COAL COMPANY )  
 )  
 and )  
 )  
 OLD REPUBLIC INSURANCE COMPANY )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Joseph E. Kane,  
Administrative Law Judge, United States Department of Labor.

Pamela Sue Stambaugh, Punta Gorda, Florida, *pro se*.

Laura Metcoff Klaus (Greenberg & Traurig LLP), Washington, D.C., for  
employer.

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

PER CURIAM:

Claimant,<sup>1</sup> without the assistance of legal counsel, appeals the Decision and Order

(1999-BLA-0387) of Administrative Law Judge Joseph E. Kane denying benefits on a request for modification 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).<sup>2</sup> This case has been before the Board previously. In a Decision and Order dated April 30, 1998, Administrative Law Judge Robert L. Hillyard credited the miner with eleven and one-half years of coal mine employment and adjudicated the survivor's claim pursuant to 20 C.F.R. Part 718. Judge Hillyard found that the evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) (2000), but further found that claimant failed to establish that the death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) (2000). Accordingly, benefits were denied.

Claimant appealed the denial of benefits to the Board, but claimant also submitted a motion to remand the claim, along with additional medical evidence that was not part of the record below. The Board considered claimant's request for remand to be a request for modification. By Order dated September 1, 1998, the Board dismissed claimant's appeal and remanded the case to the district director for modification proceedings.<sup>3</sup> Director's Exhibit 52. The district director denied claimant's request for modification and the case was forwarded to the Office of Administrative Law Judges. In his November 30, 2000, Decision and Order, Administrative Law Judge Joseph E. Kane (the administrative law judge) listed the newly submitted evidence of record and also listed the evidence considered by Judge Hillyard in the previous denial. The administrative law judge limited his analysis to whether the evidence established a mistake in a determination of fact, noting that the miner's death was not subject to a change in conditions. The administrative law judge found that the evidence failed to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or that pneumoconiosis hastened the miner's death in any way. Thus, the administrative law judge concluded that claimant was not entitled to modification pursuant to 20 C.F.R. §725.310 (2000).<sup>4</sup> Accordingly, modification and survivor's benefits were denied. In the instant appeal, claimant generally contends that she is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not participated 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. *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, are 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, claimant must demonstrate by a

preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 1-39 (1988). For survivors' claims filed on or after January 1, 1982, death will be considered 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 the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

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 are no reversible errors contained therein. The administrative law judge properly found that the newly submitted evidence, as well as the evidence submitted in connection with the prior denial, failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). The administrative law judge correctly found that as none of the medical opinions were supportive of claimant's burden, there was no evidence to weigh on the issue, and thus claimant was precluded from establishing that the miner's death was due to pneumoconiosis.<sup>5</sup>

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 Trent, supra; Perry, supra; Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *White v. Director, OWCP*, 6 BLR 1-368 (1983). As the administrative law judge correctly concluded that the newly submitted evidence does not establish that the miner's death was due to pneumoconiosis, claimant has not met her burden of proof on an essential element of entitlement. *Brown, supra; Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Trent, supra; Perry, 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 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

Consequently, we affirm the administrative law judge's finding that the newly submitted evidence of record, as well as the previously submitted evidence, was insufficient to establish death due to pneumoconiosis, and thus failed to establish a basis for modification pursuant to Section 725.310 (2000), as it is supported by substantial evidence and is in

accordance with law. We, therefore, affirm the administrative law judge's finding that the medical evidence failed to establish that pneumoconiosis caused, contributed to, or hastened the miner's death. 20 C.F.R. §718.205(c); *see Brown, supra*. Because claimant has failed to establish that the miner's death was due to pneumoconiosis, a necessary element of entitlement in a survivor's claim, we must affirm the denial of benefits. 20 C.F.R. §718.205(c); *see Trumbo, supra; Neeley, supra*.

Accordingly, the Decision and Order of the administrative law judge denying modification and benefits are affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge