

BRB No. 02-0518 BLA

LORETTA S. RICE	)	
(Widow of ROGER C. RICE)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PEABODY 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 - Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore) Carbondale, Illinois, for claimant.

Mark E. Solomons (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order - Denying Benefits (00-BLA-0312 and 00-BLA-0313) of Administrative Law Judge Rudolf L. Jansen rendered on both miner's and survivor's claims 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>1</sup> In accordance with the parties' stipulation, the administrative law judge found twenty-four years

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<sup>1</sup> The 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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

of coal mine employment and adjudicated the claims pursuant to 20 C.F.R. Part 718, based on the dates of filing.<sup>2</sup> Pursuant to the miner's claim, the administrative law judge found the existence of pneumoconiosis established by autopsy and medical opinion evidence, and that the miner was entitled to the rebuttable presumption that his pneumoconiosis arose out of coal mine employment based on his twenty-four years of coal mine employment, but found that the miner failed to establish that he was totally disabled due to pneumoconiosis. In addition, the administrative law judge found that the evidence did not establish the existence of complicated pneumoconiosis and that the miner was not, therefore, entitled to the irrebuttable presumption of totally disabling pneumoconiosis. Accordingly, the administrative law judge denied benefits on the miner's claim. Turning to the survivor's claim, the administrative law judge found that the existence of pneumoconiosis was established based on autopsy and medical opinion evidence, and that claimant was entitled to the rebuttable presumption that the miner's pneumoconiosis arose out of coal mine employment based on his twenty-four years of coal mine employment, but found that the evidence failed to establish that the miner's death was due to or hastened by pneumoconiosis. The administrative law judge also found that claimant was not entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis because the evidence failed to establish the existence of complicated pneumoconiosis. Accordingly, benefits were denied on the survivor's claim.

On appeal, claimant contends that the administrative law judge erred in not finding the existence of complicated pneumoconiosis established and, therefore, that the miner and the survivor were not entitled to the irrebuttable presumption of totally disabling pneumoconiosis and death due to pneumoconiosis. In addition, claimant contends that the administrative law judge did not properly evaluate the x-ray evidence relevant to the existence of simple pneumoconiosis and the evidence on total disability and disability causation in the miner's claim and death causation in the survivor's claim. Finally, claimant contends that the

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<sup>2</sup> The miner filed his claim for benefits on September 17, 1997, and died on February 16, 1999, while his case was pending. Director's Exhibits 1, 16, 30. Claimant filed her survivor's claim for benefits on March 3, 1999. Director's Exhibit 32. The miner's case was remanded for consolidation with the survivor's claim. Director's Exhibit 31. The district director awarded benefits on both miner's and survivor's on November 1, 1999. Director's Exhibits 43, 45, 52. Employer's appeal ensued.

administrative law judge erred in failing to determine whether, in addition to the existence of clinical pneumoconiosis, the existence of “legal” pneumoconiosis was established inasmuch as such a finding would have an impact on the administrative law judge’s evaluation of the evidence relevant to disability causation and death causation.

The Board’s scope of review is defined by statute. If the administrative law judge’s findings of fact and conclusions of law 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 into the Act 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 a living miner’s claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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 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); *see Griffith v. Director, OWCP*, 49 F.3d 184, 186 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *see also Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 183, 16 BLR 2-121 (7th Cir. 1992).

Claimant first contends that the administrative law judge failed to consider and discuss all the evidence showing the existence of complicated pneumoconiosis. Specifically, claimant contends that Drs. Ahmed, Mathur, Alexander, Cappiello and Miller observed large opacities on x-ray that were sufficient to establish complicated pneumoconiosis.

In considering the evidence relevant to the existence of complicated pneumoconiosis, the administrative law judge found that Drs. Ahmed, Alexander, Cappiello and Cohen, dually

qualified readers, found the existence of large opacities on x-ray indicative of complicated pneumoconiosis under the regulations, but that other readers of record, who were equally qualified, did not find the same large opacities, and instead interpreted the x-rays as either negative or showing only simple pneumoconiosis. Further, the administrative law judge noted that, in discussing the x-rays showing large opacities, Drs. Naeye, Caffrey and Hutchins opined that the large granulomas seen were the result of the miner's history of treated blastomyces. Accordingly, the administrative law judge found, given the relatively equal qualifications of the doctors who read the x-rays and provided opinions, that the weight of the evidence did not establish the existence of complicated pneumoconiosis, and that the miner and the survivor were not entitled to the irrebuttable presumption of disability and death due to pneumoconiosis. This was rational. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 21 BLR 2-615 (6th Cir. 1999); *see also Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Braenovich v. Cannelton Industries, Inc./Cypress Amax*, BLR , BRB No. 02-0365 BLA (Feb. 12, 2003)(Gabauer, J., concurring); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*).

Claimant next contends that the administrative law judge did not properly evaluate all the x-ray evidence of simple pneumoconiosis when he found that the x-ray evidence did not establish the existence of pneumoconiosis. However, inasmuch as Section 718.202(a)(1)-(4) provides four distinct methods for establishing the existence of pneumoconiosis, *i.e.*, by x-ray, by biopsy or autopsy evidence, through the applicability of certain presumptions, and by medical opinions, and the administrative law judge found the existence of pneumoconiosis established by autopsy and medical opinion evidence, we need not reach claimant's argument concerning the administrative law judge's evaluation of the x-ray evidence of simple pneumoconiosis. 20 C.F.R. §718.202(a); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Claimant further contends that the administrative law judge failed to properly evaluate and discuss the opinions on disability causation and failed to properly consider the evidence establishing the existence of legal pneumoconiosis and that the administrative law judge erred, therefore, in finding that the evidence failed to establish disability causation. In considering the opinions on disability causation, the administrative law judge found that the majority of the most qualified physicians, who offered opinions on the issue of disability, found that the "degree of pneumoconiosis [the miner had] was so insignificant that [the miner's] lung function would not have been affected by the disease." Decision and Order at 22. Rather, the administrative law judge found that the majority of the physicians opined that the miner "had a severe obstructive disease that was caused by cigarette smoking in combination with [the miner's] history of a fungal infection in his lungs." Decision and Order at 22. The administrative law judge, therefore, concluded that the weight of this medical opinion evidence, did not establish that "any pulmonary disability the miner may have had was due to pneumoconiosis or any disease relating to the miner's past exposure to

coal dust.” Decision and Order at 22. This was rational. *See* 20 C.F.R. §718.204(c); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). Because we affirm the administrative law judge’s finding that the evidence failed to establish disability causation, we need not address claimant’s argument concerning total disability or the administrative law judge’s error in failing to consider separately the elements of disability and causation. *See Larioni, supra*. Claimant’s argument that the administrative law judge erred in failing to consider whether the existence of legal pneumoconiosis was established is rejected inasmuch as the administrative law judge’s discussion of the opinions on disability causation and death causation *infra* fully encompasses the definition of legal pneumoconiosis, *i.e.*, pneumoconiosis as defined by the Act. 20 C.F.R. §718.201. Accordingly, the administrative law judge’s denial of benefits on the miner’s claim is affirmed.

Turning to the survivor’s claim, claimant contends that the administrative law judge failed to evaluate properly the medical opinion evidence on death causation and erred in finding that the medical opinion evidence failed to establish death due to pneumoconiosis pursuant to 718.205(c).

In finding that death causation was not established, the administrative law judge accorded greatest weight to the opinions of Drs. Tuteur, Renn, Hippensteel, Naeye and Caffrey who found that the pneumoconiosis diagnosed on autopsy was of an insufficient degree to have caused or hastened death because these opinions were reasoned and extremely well-documented. While acknowledging that Dr. Bledig had been claimant’s treating physician, the administrative law judge accorded little weight to his opinion stating that he believed pneumoconiosis contributed to the miner’s death, because it was not as well-documented or reasoned as the other opinions of record. Further, the administrative law judge accorded little weight to the opinions of Drs. Green and Cohen that pneumoconiosis was a significant factor in the miner’s death inasmuch as they believed that the miner suffered from complicated pneumoconiosis. Finally, the administrative law judge accorded less weight to the opinion of Dr. Heidingsfelder who found that the miner’s severe lung disease was a contributory factor to the timing of death inasmuch as he was equivocal as to whether pneumoconiosis actually contributed to the miner’s death. Decision and Order at 24-25. Accordingly, on weighing this evidence, the administrative law judge concluded that it failed to prove the miner’s death was due to pneumoconiosis. This was rational. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Clark, supra*; *Fields, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Hall v. Director, OWCP*, 6 BLR 1-1306 (1984). We therefore affirm the administrative law judge’s finding that the evidence failed to establish death due to pneumoconiosis pursuant to Section 718.205(c) as it is supported by substantial evidence and in accordance with law.

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). In this case, contrary to claimant's contentions, the administrative law judge made full and complete findings on the cause of disability and death and thus, there has been no violation of the requirements of the Administrative Procedure Act. *See* 5 U.S.C. 557(c)(3)(A), as incorporated into the Act by 5 U.S.C. 554(c)(2), 33 U.S.C. 919(d) and 30 U.S.C. 932(a). Consequently, we affirm the administrative law judge's finding that the evidence of record failed to establish the miner's disability and death were due to pneumoconiosis. *See Peabody, supra; Trent, supra; Perry, supra.*

Accordingly, the administrative law judge's Decision and Order - Denying Benefits on both the miner's and the survivor's claims is 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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REGINA C. McGRANERY  
Administrative Appeals Judge