

BRB No. 02-0586 BLA

NANCY L. JOHNSON)	
(Widow of ROGER L. JOHNSON))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ISLAND CREEK 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 Edward T. Miller, Administrative Law Judge, United States Department of Labor.

Nancy L. Johnson, Pounding Mill, Virginia, *pro se*.¹

Ashley M Harman (Jackson & Kelly), Morgantown, West Virginia, for employer.

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

PER CURIAM:

¹Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant, 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).

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (01-BLA-0169) of Administrative Law Judge Edward T. Miller on a request for modification of 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).² The administrative law judge found that the instant claim was filed on April 7, 1997 and was denied on July 23, 1999, by an administrative law judge because the evidence did not establish that pneumoconiosis hastened or caused the miner's death. Decision and Order a 2; Director's Exhibit 39. The administrative law judge further found that claimant did not appeal that decision, but filed the instant request for modification on July 10, 2000. The administrative law judge noted that in a survivor's claim, the only basis for modification is the existence of a mistake in fact pursuant to 20 C.F.R. §725.310 (2000).³ Considering both the new evidence submitted on modification and the prior evidence, the administrative law judge determined that no mistake in fact is established. Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's findings. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has indicated that he will not participate in this appeal.

²Claimant is the surviving spouse of the miner, Roger L. Johnson, who died on May 9, 1996. Director's Exhibit 7.

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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations. The amendments to 20 C.F.R. §725.310 do not apply to requests for modification, such as the present one, filed before January 19, 2001. 20 C.F.R. §725.2.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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).

After consideration of the administrative law judge’s Decision and Order and the evidence of record, we hold that the administrative law judge’s findings are rational and in accordance with law. In considering whether a mistake in a determination of fact occurred, the administrative law judge reviewed Administrative Law Judge Daniel J. Roketenetz’s denial of the survivor’s claim.⁴

⁴Administrative Law Judge Roketenetz accepted employer’s stipulation that the miner suffered from pneumoconiosis arising out of coal mine employment as it was supported by pathological evidence and the miner’s history of twenty-six years of coal mine employment. He then found that none of the medical records regarding the miner’s treatment indicated that he had coal workers’ pneumoconiosis and that Dr. Scott, the miner’s treating physician who signed the death certificate, did not mention pneumoconiosis as playing a part in the miner’s death. Director’s Exhibit 7. Additionally the autopsy prosector, though finding simple pneumoconiosis to be present, did not find that it contributed to death. Director’s Exhibit 8. Judge Roketenetz found that this conclusion was supported by ten other physicians and that only Dr. Jones offered a contrary opinion. However, Judge Roketenetz found Dr. Jones’s opinion to be unpersuasive due to the substantial contrary probative evidence in the record. He therefore denied

Decision and Order at 10-11. The administrative law judge found that the “evidentiary record strongly supports Judge Roketenetz[’s] findings and this tribunal finds that no mistake in a determination of fact was made.” Decision and Order at 11. The administrative law judge then considered the evidence submitted on modification. Claimant submitted a letter from Dr. Scott, the miner’s treating physician, that stated that the miner’s death was caused, contributed to, or hastened by his simple coal workers’ pneumoconiosis. Director’s Exhibit 42. Drs. Naeye, Bush, Repsher, Michos, Castle, Dahhan, and Crouch addressed Dr. Scott’s letter in supplemental opinions to the reports that they had prepared previously. Employer’s Exhibits 1-3, 5-7, 11, 13. These physicians agreed that Dr. Scott’s letter did not alter their previous opinions, that pneumoconiosis did not play a role in the miner’s death.

benefits. Director’s Exhibit 39.

The administrative law judge also found that Dr. Jarboe, who reviewed medical evidence for the first time on modification, and Dr. Caffrey, who reviewed medical evidence and autopsy slides, provided well reasoned opinions that the miner's mild degree of coal workers' pneumoconiosis did not contribute to his death in any way. Employer's Exhibits 4, 9. The administrative law judge then found that Drs. Naeye, Bush, Caffrey, Repsher, Castle and Dahhan explained in great detail that neither the medical nor scientific evidence supported Dr. Scott's findings. The administrative law judge stated that he agreed with the physicians of record who considered that Dr. Scott's opinion is neither reasoned nor supported by the evidence of record because he did not provide a rationale for his conclusions. Decision and Order at 12. The administrative law judge additionally found that Dr. Scott's opinion was devoid of probative value because the opinion was equivocal⁵ and he failed to provide an explanation for the inconsistencies with his prior opinion, as reflected in the death certificate. *Id.* We hold that the administrative law judge's findings and the analysis provided in this case are rational and supported by substantial evidence. *See U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The administrative law judge is empowered to weigh the medical evidence and to draw his 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 Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, we affirm the administrative law judge's determination that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The administrative law judge's finding that no mistake in a determination of fact was established is therefore affirmed. *See* 20 C.F.R. §725.310 (2000); *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990).

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

SO ORDERED.

⁵The administrative law judge noted that Dr. Scott opined that pneumoconiosis "could" or "may" have contributed to death, and that the physician opined that "anything like this may be a contributing factor." Decision and Order at 12; Director's Exhibit 40.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Law Judge