

BRB No. 02-0628 BLA

THEDA M. CARROLL (Widow of)	
WILLIAM CLYDE CARROLL))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
WESTMORELAND COAL COMPANY)	
)	
and)	
)	
ACORDIA EMPLOYER'S SERVICES)	
CORPORATION)	
)	
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 - Denial of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Theda M. Carroll, Big Stone Gap, Virginia, *pro se*.

Ashley M. Harman and Douglas A. Smoot (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant, the miner's widow,¹ without the assistance of legal counsel,² appeals the

Decision and Order (2001-BLA-0432) of Administrative Law Judge Richard T. Stansell-Gamm denying benefits on a survivor's claim 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).³ The administrative law judge credited the miner with forty-two years of coal mine employment and adjudicated this survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant generally contends that she is entitled to benefits. Employer urges affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief 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'Keeffe 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 BLR 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); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

After consideration of the administrative law judge's Decision and Order, the arguments of the parties 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 found that the preponderance of the more probative medical opinion evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). The administrative law judge found that Dr. Williams reported that the miner had

pneumoconiosis and died from coronary artery disease exacerbated by his severe pulmonary disease. Decision and Order at 14, 21-23; Director's Exhibits 17, 21B, 24-51, 24-52. The administrative law judge, however, acted within his discretion in according diminished weight to the opinion of Dr. Williams regarding the cause of the miner's death because he found that the opinion was not well documented or reasoned. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984); Decision and Order at 14, 21-23; Director's Exhibits 17, 21B, 24-51, 24-52. The administrative law judge rationally found that Dr. Williams's conclusion as to the role of pneumoconiosis in the miner's death was undermined since the physician did not explain how his 1988 assessment of the miner's impairment was still valid in light of later pulmonary and respiratory objective tests that produced normal results. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145 (1984); *Stanley v. Eastern Associated Coal Corp.*, 6 BLR 1-1157 (1984); Decision and Order at 22; Director's Exhibit 17.

Furthermore, the administrative law judge also acted within his discretion in crediting the opinions of Drs. Miller,⁴ Byers, Zaldivar, Castle and Paranthaman, that the miner's pneumoconiosis, if any, was too mild to have hastened or contributed in any way to his death, as the administrative law judge found that these physicians' opinions were well-documented and well-reasoned. See *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 21-23; Director's Exhibits 4-6, 17, 20, 23-B, 23-C, 24-35, 24-49, 24-50, 26-8, 26-22; Employer's Exhibits 1, 2. The administrative law judge reasonably credited the documented and reasoned conclusions of Drs. Byers, Zaldivar, Michos, Paranthaman, Fino and Castle, that the miner's death was due solely to his severe coronary artery disease and hypertension, in light of the qualifications of the physicians, the explanations of their medical opinions and the documentation underlying their opinions. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark, supra*; *Wetzel, supra*; *Lucostic supra*; Decision and Order at 23; Director's Exhibits 6, 17, 18, 20, 22, 23-B, 23-C, 24-35, 24-49, 24-50, 26-8, 26-22; Employer's Exhibits 1, 2.

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 of entitlement. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *White v. Director, OWCP*, 6 BLR 1-368 (1983). 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 *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); *Worley v. Blue Diamond*

Coal Co., 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987). Thus, the administrative law judge permissibly found that the evidence was insufficient to establish death due to pneumoconiosis based on the more credible medical opinions by the physicians with superior qualifications who found that pneumoconiosis did not cause or contribute to the miner's death. *Clark, supra; Fields, supra*. Consequently, we affirm the administrative law judge's finding that the medical opinions of record failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Inasmuch as claimant has not met her burden of proof on an essential element of entitlement in a survivor's claim, we must affirm the denial of benefits and we need not address the administrative law judge's findings under Section 718.202(a). 20 C.F.R. §718.205(c); *see Shuff, supra; Clark, supra; Trent, supra; Trumbo, supra; Neeley, supra*.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER S. GABAUER, Jr.
Administrative Appeals Judge