

BRB No. 02-0677 BLA

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| NANCY J. BARNETT |) | |
| (Widow of GEORGE H. BARNETT) |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| CUMBERLAND MOUNTAIN SERVICE |) | DATE ISSUED: |
| CORPORATION |) | |
| |) | |
| 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 Joseph E. Kane,
Administrative Law Judge, United States Department of Labor.

Nancy J. Barnett, Middlesboro, Kentucky, pro se.

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

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

PER CURIAM:

Claimant,¹ the miner's widow, appeals the Decision and Order Denying Benefits (01-

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

BLA-0751) of Administrative Law Judge Joseph E. Kane rendered on a 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 nineteen and one-half years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718, based on the date of filing.³ The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a) and 718.203, and that the evidence was insufficient to establish that pneumoconiosis was a substantially contributing cause of death pursuant to Section 718.205(c). Accordingly, benefits were denied.

On 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 (the Director), is not participating 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. *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *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, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith*,

² 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.

³ The miner died on July 17, 2000. Director's Exhibit 20. Claimant filed this survivor's claim for benefits on August 23, 2000. Director's Exhibit 1. The claims filed by the miner during his lifetime were denied for failure to prove any element of entitlement and the miner did not pursue these claims. Director's Exhibits 19, 20.

Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

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).

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 administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. The administrative law judge reasonably determined that the x-ray evidence was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) based on the great weight of negative x-ray readings by physicians with superior qualifications. *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989). In addition, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2) and (3) as there was no biopsy or autopsy evidence of pneumoconiosis in the record, this claim was filed after January 1, 1982, and there was no evidence of complicated pneumoconiosis in the record. 20 C.F.R. §718.202(a)(2), (3).

Considering the medical opinion evidence, the administrative law judge found that, out of ten medical opinions of record, Dr. Baker's was the only one to diagnose the existence of pneumoconiosis. The administrative law judge, however, permissibly accorded Dr. Baker's opinion little weight as it lacked clear reasoning and documentation. *Clark, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985). In addition, the administrative law judge properly found that the deposition testimony of Drs. Felson and Wiot did not constitute medical opinion evidence as their diagnoses were based solely on x-ray interpretations. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Accordingly, the administrative law judge correctly found that the

existence of pneumoconiosis was not established at Section 718.202(a)(4) as the only medical opinion of record which could establish the existence of pneumoconiosis was unreasoned. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'd sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Clark, supra; Fields, supra; King, supra*. The administrative law judge, therefore, correctly found that because the existence of pneumoconiosis was not established, claimant could not establish that the miner's death was due to pneumoconiosis. *Trumbo, supra*. Further, because the administrative law judge properly rejected the only medical opinion which could establish the existence of pneumoconiosis, we need not address the administrative law judge's findings regarding the medical opinion evidence which found that the miner did not have pneumoconiosis. *See Ondecko, supra; Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); *see also* 20 C.F.R. §718.201. Consequently, we affirm the administrative law judge's finding that the evidence of record failed to establish the existence of pneumoconiosis and death due to pneumoconiosis. *See Griffith, supra; Brown, supra; Trent, supra; Perry, supra.*

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge