

BRB No. 97-0967 BLA

VERNEDITH MEADE RATLIFF	)	
(Widow of GEORGE MEADE)	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
GUM BRANCH COAL COMPANY	)	
	)	
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 on Modification of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Vernedith Meade Ratliff, Stanville, Kentucky, *pro se*.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, without the assistance of legal counsel, appeals the Decision and Order on Modification (93-BLA-1440) of Administrative Law Judge Daniel J. Roketenetz denying benefits on claims filed by the miner and survivor 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). This case is before the Board for the second time. The miner filed his original claim for black lung benefits on September 7, 1976, which was denied by an administrative law judge on July 28, 1991. Decision and Order at 2-3; Director's Exhibits 1, 48. Within one year of the denial, the miner submitted new evidence to the district director and requested modification of the denial, but the request was denied on the basis that the evidence failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d). The miner again submitted new evidence and thereafter, within one year of each subsequent denial by the district director, the miner submitted evidence supporting his request for modification, requested a hearing and filed another claim. The

miner ultimately appealed the district director' s July 11, 1988, denial to the Board and in *Meade v. Gum Branch Coal Co.*, BRB No. 88-2719 BLA (Dec. 29, 1989)(unpub.), the Board vacated the denial of benefits and remanded the case to the district director to consider the claim as a request for modification pursuant to 20 C.F.R. §725.310. On September 18, 1990, the Board denied employer' s request for reconsideration. On March 17, 1992, while the claim was pending before the district director on remand, the miner died and on April 13, 1992, the miner' s widow, claimant herein, filed a survivor' s claim. The district director denied both claims and the case was referred to the Office of Administrative Law Judges on June 25, 1993. Decision and Order at 3; Director' s Exhibit 67. The administrative law judge decided this case on the record and credited the miner with twenty-four years of coal mine employment. The administrative law judge found that the evidence was sufficient to establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(4), but that rebuttal of the interim presumption was established pursuant to 20 C.F.R. §727.203(b)(4). The administrative law judge further found that entitlement was precluded under 20 C.F.R. Part 718 in the survivor' s claim. Accordingly, 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, is not participating in this appeal.<sup>1</sup>

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).

After consideration of the administrative law judge's Decision and Order on Modification, 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 is no reversible error contained therein. In finding that the evidence was sufficient to establish rebuttal of the interim presumption pursuant to Section 727.203(b)(4), the administrative law judge permissibly credited the negative x-ray evidence and the medical opinions of Drs. Sutherland, O' Neill, Broudy, Lane and Dahhan, that the miner did not have pneumoconiosis as defined by the Act, over the medical reports of Drs. Arnett, Hieronymus, Myers, Wright and Sundaram, who diagnosed pneumoconiosis on the basis of

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<sup>1</sup>The administrative law judge' s finding the the evidence was sufficient to establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(4) is affirmed since it is not adverse to claimant and not challenged by the other parties. *Skrack v. Island Creeek Coal Co.*, 6 BLR 1-710 (1983).

x-ray evidence. In the instant case, all but one of the classified x-ray interpretations of record are negative. Decision and Order at 7-8. Drs. Sutherland, O' Neill, Broudy, Lane and Dahhan attributed claimant' s impairment entirely to muscular dystrophy and obesity and opined that the miner did not suffer from pneumoconiosis. Decision and Order at 8.

Negative x-ray readings in conjunction with medical opinions not based solely on negative x-rays can establish rebuttal of the interim presumption at subsection (b)(4). *Shepherd v. Allied Coals, Inc.*, 6 BLR 1-1138 (1984). Furthermore, a physician's opinion diagnosing a respiratory disease, but finding that a claimant's condition is unrelated to coal dust exposure in coal mine employment is also sufficient to establish rebuttal under subsection (b)(4). *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986); *Honaker v. Habco Coal Co.*, 6 BLR 1-408 (1983). The administrative law judge permissibly found that the opinions of Drs. Sutherland, O' Neill, Broudy, Lane and Dahhan, attributing claimant's impairment to muscular dystrophy and obesity, coupled with the "overwhelming preponderance" of the negative x-ray evidence, were sufficient to establish rebuttal of the interim presumption pursuant to subsection (b)(4). Decision and Order at 8. Moreover, in weighing the opinions, the administrative law judge properly considered the qualifications of the physicians. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); Decision and Order at 8. Thus, the administrative law judge's weighing of the medical evidence and his credibility determinations regarding the medical opinions under subsection (b)(4) were rational and we affirm his findings thereunder. Accordingly, the administrative law judge's finding that rebuttal of the interim presumption was established pursuant to Section 727.203(b)(4) is affirmed as well as his denial of modification of the miner' s claim pursuant to Section 725.310 as they are based on substantial evidence.<sup>2</sup> *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994).

The administrative law judge also properly found that entitlement was precluded in the survivor' s claim pursuant to Section 718.205 since the preponderance of the x-ray and medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); Decision and Order at 9. Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement under 20 C.F.R. Part 718, entitlement thereunder is precluded in both the miner' s and survivor' s claims. *Anderson*

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<sup>2</sup>We note the the administrative law judge reviewed the record to determine whether a mistake of fact occurred in the prior decision and properly determined that no mistake of fact occurred in the prior adjudication of this claim. *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994); Decision and Order at 8.

*v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge