

BRB No. 98-0733 BLA

HUI SUN HELSLEY	)	
(Widow of ROBERT L. HELSLEY)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
AMAX 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 of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Paul (Rick) Rauch (McNamar, Fearnow & McSharar, P.C.), Indianapolis, Indiana, for claimant.

Scott A. White (Keefe & DePauli, P.C.), Fairview Heights, Illinois, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (95-BLA-1799) of Administrative Law Judge Rudolf L. Jansen denying benefits on 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). The administrative law judge found fifteen years of coal mine employment established, as stipulated by the parties, and adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>1</sup> The administrative law judge

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<sup>1</sup> Claimant is the surviving widow of the miner, Robert L. Helsley, who died on

found that the existence of pneumoconiosis was established by the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge further found, however, that death due to pneumoconiosis was not established pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c). Employer responds, urging that the administrative law judge's Decision and Order denying benefits be affirmed.<sup>2</sup> In response, claimant has filed a reply brief, reiterating her contentions. The Director, Office of Workers' Compensation Programs [the Director], as a party-in-interest, has not responded to this appeal.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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November 30, 1993, Director's Exhibits 1, 6-7. The miner never filed a living miner's claim. Subsequent to the miner's death, claimant filed a survivor's claim on March 28, 1994, Director's Exhibit 1.

<sup>2</sup> Employer's response brief was filed on its behalf by Teri A. Czajka and Dana G. Meier of the law firm of Ice, Miller, Donadio & Ryan of Indianapolis, Indiana, which represented employer at the time that the brief was filed. Subsequent to the submission of employer's response brief, the Board received a notice of a change of counsel from employer.

In order to establish entitlement in this survivor' s claim filed after January 1, 1982, in which the miner had not been awarded benefits on a claim filed prior to January 1, 1982, see 30 U.S.C. §§901; 932(1), claimant must establish the existence of pneumoconiosis, see 20 C.F.R. §718.202; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988),<sup>3</sup> and that the miner's death was due to pneumoconiosis, see 20 C.F.R. §§718.1; 718.205(c); *Neeley, supra*; cf. *Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989), which arose out of coal mine employment, see 20 C.F.R. §718.203; *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).<sup>4</sup> Moreover, the United States Court of

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<sup>3</sup> Inasmuch as the administrative law judge' s finding that the existence of pneumoconiosis was established by the x-ray evidence of record pursuant to Section 718.202(a)(1) is not challenged by any party on appeal, it is affirmed, see *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>4</sup> None of the available presumptions pursuant to 20 C.F.R. §718.303-306 are

Appeals for the Seventh Circuit, wherein this case arises, has held that a survivor may demonstrate that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death pursuant to Section 718.205(c)(2) by demonstrating that the miner's pneumoconiosis resulted in hastening the miner's death to any degree, see *Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992).<sup>5</sup>

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applicable, see 20 C.F.R. §718.202(a)(3). The presumptions at Section 411(c)(2) of the Act, 30 U.S.C. §921(c)(2), as implemented by 20 C.F.R. §718.303, at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, and at Section 411(c)(5) of the Act, 30 U.S.C. §921(c)(5), as implemented by 20 C.F.R. §718.306, are inapplicable to this survivor's claim filed after January 1, 1982, see 20 C.F.R. §§718.303(c), 718.305(a), (e), 20 C.F.R. §718.306(a); Director's Exhibit 1. Finally, as the administrative law judge found, Decision and Order at 8, inasmuch as there is no evidence of complicated pneumoconiosis in the record, the irrebuttable presumption at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, is inapplicable, see 20 C.F.R. §§718.205(c)(3), 718.304.

<sup>5</sup> Contrary to claimant's contention, the administrative law judge properly stated the Section 718.205(c)(2) standard enunciated by the Seventh Circuit Court in *Railey, supra*, see Decision and Order at 8.

The administrative law judge considered all of the relevant medical opinion evidence of record pursuant to Section 718.205(c), which includes the opinion of Dr. Heidingsfelder, the autopsy prosector who also completed the miner's death certificate, Director's Exhibits 6-7. After conducting a gross examination of the miner's lungs, Dr. Heidingsfelder found that the cause of the miner's death was a myocardial infarction due to coronary artery narrowing and thrombosis arising from atherosclerotic cardiovascular disease, Director's Exhibit 6. After noting that it had been reported to him that the miner was not a known smoker, Dr. Heidingsfelder's autopsy findings included a pattern of anthracosis and fibrosis consistent with environmental lung disease and he concluded that a "possible" contributory factor to the timing of the miner's death was pulmonary anthracosis, Director's Exhibit 7. Dr. Long reviewed Dr. Heidingsfelder's autopsy report and stated that a finding of anthracosis cannot establish the existence of pneumoconiosis without microscopic findings and that, in any event, if the miner had coal workers' pneumoconiosis, it did not cause, contribute to or hasten the miner's death, Director's Exhibit 9. Dr. Jones reviewed the medical and autopsy evidence and slides, Claimant's Exhibit 1, diagnosed coal workers' pneumoconiosis and that the miner had a significant respiratory impairment. Dr. Jones stated that the miner's coal workers' pneumoconiosis lead to hypoxia and arterial oxygen desaturation, and because the miner's lungs were significantly impaired, coal workers' pneumoconiosis played a significant, aggravating and hastening role in the miner's death.<sup>6</sup> Finally, Dr. Kleinerman, a board-certified physician in pathology, reviewed the medical and autopsy evidence and slides, Director's Exhibit 19; Employer's Exhibits 1-2. Although he found evidence of a mild restrictive abnormality on the only pulmonary function study of record,<sup>7</sup> Dr. Kleinerman found no evidence of coal workers' pneumoconiosis or significant pulmonary impairment and, therefore, opined that the

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<sup>6</sup> Although claimant contends that Dr. Jones is a board-certified pathologist, his qualifications are not contained in the record.

<sup>7</sup> The record contains a non-qualifying pulmonary function study administered by Dr. Gelhausen, who noted that it indicated moderate restriction, see Director's Exhibit 8. A "qualifying" pulmonary function study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendix B. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1).

miner' s coal mine dust exposure did not in any way hasten, contribute to or cause the miner' s death. The administrative law judge also noted that Dr. Kleinerman found no objective support for Dr. Jones' conclusions that the miner suffered from a significant respiratory impairment, hypoxia or arterial oxygen desaturation, Employer' s Exhibit 2.

The administrative law judge credited Dr. Kleinerman' s opinion in light of his superior qualifications and the supporting opinion of Dr. Long, Decision and Order at 9. Contrary to claimant' s contentions, the administrative law judge, within his discretion, gave little weight to Dr. Heidingsfelder' s opinion that anthracosis was a possible contributory factor to the miner' s death, Director' s Exhibit 7, because it was equivocal, see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). The administrative law judge also, within his discretion, gave Dr. Heidingsfelder' s opinion little weight because his reliance on the report that the miner was not a known smoker was contrary to the finding of the miner' s treating physician, Dr. Gelhausen, Director' s Exhibit 8, that the miner was a chronic tobacco abuser, see generally *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986), and because Dr. Heidingsfelder' s autopsy findings were based only on a gross examination of the miner' s lungs, but not a microscopic examination of the autopsy slides, see 20 C.F.R. §718.106(a); *Fetterman v. Director, OWCP*, 7 BLR 1-688, 1-691 (1985); see also *Urgolites v. BethEnergy Mines, Inc.*, 17 BLR 1-20 (1992); *Gruller v. BethEnergy Mines, Inc.*, 16 BLR 1-3 (1991); *Terlip v. Director, OWCP*, 8 BLR 1-363 (1985); *Cantrell v. United States Steel Corp.*, 6 BLR 1-13 (1984). Finally, the administrative law judge, within his discretion, discredited Dr. Jones' opinion as his opinion was not supported by the objective evidence of record, see *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

Claimant contends that Dr. Jones' opinion is consistent with the objective evidence of record, as well as Dr. Kleinerman' s opinion, showing that the miner suffered from pulmonary restriction. Thus, claimant contends that the administrative law judge mischaracterized and/or failed to properly consider Dr. Jones' opinion. Contrary to claimant' s contention, although both Drs. Jones and Kleinerman found that the miner suffered from pulmonary restriction, the administrative law judge properly noted that only Dr. Jones found that the miner had a significant respiratory impairment, Claimant' s Exhibit 1; Decision and Order at 5-6. The administrative law judge, as the trier-of-fact, has broad discretion to assess the evidence of record, draw his own conclusions and inferences therefrom, see *Maddaleni v. The Pittsburg*

& *Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986), and to determine whether an opinion is documented and reasoned, see *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucoctic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Inasmuch as the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge if the administrative law judge' s findings are supported by substantial evidence and in accordance with the law, see *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), we reject claimant' s contentions.

Consequently, inasmuch as the administrative law judge, in a permissible exercise of his discretion, discredited the only opinions of record which supported entitlement under Section 718.205(c), those of Drs. Heidingsfelder and Jones, we affirm the administrative law judge' s finding that claimant failed to establish death due to pneumoconiosis pursuant to Section 718.205(c), see *Neeley, supra*; *cf. Smith, supra*; see also *Railey, supra*.<sup>8</sup>

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<sup>8</sup> Inasmuch as the administrative law judge, within his discretion, discredited the only opinions of record which supported entitlement under Section 718.205(c) from Drs. Heidingsfelder and Jones, we need not address claimant' s contention that the administrative law judge erred in weighing the opinions of Drs. Kleinerman and Long under Section 718.205(c).

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge