

BRB No. 98-0977 BLA

NORA SLONE CAUDILL	)	
(Widow of CHARLES SLONE)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Gary K. Stearman ( Henty L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order - Denying Benefits (97-BLA-1415) of Administrative Law Judge Donald W. Mosser on a request for modification in 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 administrative law judge found that the evidence established 9.50 years of coal mine employment. The administrative law judge found further that the evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), and that the evidence was insufficient to establish that the miner's

---

<sup>1</sup> Claimant is Nora Slone Caudill, the surviving widow of the miner, Charles Slone Bray.

death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly benefits were denied.

The relevant procedural history of this claim is as follows: the miner's claim was finally denied by Administrative Law Judge Julius A. Johnson in a Decision and Order dated April 1, 1988. *Id.* This decision became final after no appeal was filed. The miner died on April 5, 1995. Director's Exhibit 7. The widow then filed a survivor's claim on May 2, 1995. Director's Exhibit 1. This claim was informally denied by the district director on October 5, 1995. Director's Exhibit 11. On May 24, 1996, within one year of that denial, claimant filed a second survivor's claim, which was considered to be a modification request. Director's Exhibit 13. The district director denied this request on March 21, 1997, Director's Exhibit 21, and at claimant's request the case was forwarded to the Office of Administrative Law Judges for a hearing. Director's Exhibit 17. A hearing was held on November 20, 1997, and Administrative Law Judge Donald W. Mosser denied the claim in a Decision and Order dated April 6, 1988, where Judge Mosser analyzed the claim by weighing both the old and new evidence, and in doing so complied with the holding set forth in *Consolidation Coal Co. v. Worrell*, 27 F. 3d 227, 18 BLR 2-90 (6th Cir. 1994).

On appeal, claimant challenges the administrative law judge's determination of years of coal mine employment, asserting that the evidence supports between 15 and 22 years of coal mine employment. Claimant asserts that the administrative law judge relied upon the prior administrative law judge's finding, and that this constitutes a mistake of fact. Further, claimant asserts that the administrative law judge neglected to provide a rationale for discrediting certain testimonial evidence. Claimant also challenges the administrative law judge's findings with respect to the x-ray evidence at Section 718.202(a)(1) and the medical opinions of record at Section 718.202(a)(4). The Director, Office of Workers' Compensation Programs (the Director), in response, asserts that the administrative law judge's findings that the evidence fails to establish the existence of pneumoconiosis and fails to establish death due to pneumoconiosis is supported by substantial evidence, and accordingly, he urges affirmance of the administrative law judge's Decision and Order.

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).

Claimant initially challenges the administrative law judge's finding of the miner's years of qualifying coal mine employment, asserting that the miner indicated 14 years on his application for benefits. Claimant also challenges the administrative law judge's finding that the evidence fails to establish the existence of pneumoconiosis pursuant to Section

718.202(a). Claimant, however, fails to challenge the administrative law judge's finding that the evidence fails to establish that the miner's death was due to pneumoconiosis at Section 718.205(c). The Board has held that where a party, who is represented by counsel, fails to challenge an administrative law judge's finding with specificity, that finding will be affirmed on appeal. Moreover, the failure to challenge an administrative law judge's adverse determination with respect to a necessary element of entitlement requires the Board to affirm the decision below. *See Cox v. Benefits Review Board*, 791 F. 2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g sub nom. Cox v. Director, OWCP*, 7 BLR 1-610 (1984); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). As claimant's brief only addresses the administrative law judge's findings with regard to years of coal mine employment and the existence of pneumoconiosis at Section 718.202(a), without addressing the administrative law judge's finding at Section 718.205(c), the administrative law judge's finding at Section 718.205(c) must be affirmed.

In any case, we note that with respect to the merits, the administrative law judge correctly found that the miner's death certificate found that the miner died due to a myocardial infarction. Director's Exhibit 7. Further, the administrative law judge accurately found that the only other newly submitted evidence was hospital records which refer to the miner's heart ailments, but do not establish that the miner died due to pneumoconiosis. Director's Exhibit 20; Decision and Order at 5. The administrative law judge correctly weighed all of the old and new evidence, *see Worrell, supra*, and correctly concluded that all of this evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-11 (6th Cir. 1995); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v Director, OWCP*, 11 BLR 1-85 (1988). We affirm, therefore, the administrative law judge's finding that the evidence fails to establish death due to pneumoconiosis at Section 718.205(c), and thereby, the administrative law judge's denial of benefits on the survivor's claim pursuant to Part 718.<sup>2</sup>

---

<sup>2</sup> We need not address claimant's contentions with respect to the years of the miner's coal mine employment and the existence of pneumoconiosis at Section 718.202(a), as they are rendered moot by our disposition of the case. *Warman v. Pittsburg and Midway Coal Co.*, 8 BLR 1-390 (1985); *Rematta v. Director, OWCP*, 8 BLR 1-214 (1985).

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

SO ORDERED.

---

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

MALCOLM D. NELSON, Acting  
Administrative Appeals Judge