

BRB No. 97-1167 BLA

MARIE B. COLLINS)
(Widow of FRED T. COLLINS))
)
 Claimant-Petitioner)
)
 v.)
)
 CLINCHFIELD 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 on Remand - Denying Benefits of Clement J. Kichuk, Administrative Law Judge, United States Department of Labor.

Marie B. Collins, Abingdon, Virginia, *pro se*.

H. Ashby Dickerson (Penn, Stuart & Esridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant¹, without the benefit of counsel, appeals the Decision and Order on Remand - Denying Benefits (93-BLA-0935 and 93-BLA-0943) of Administrative Law Judge Clement J. Kichuk on both a miner's claim and 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.

¹ Claimant is Marie B. Collins, widow of the miner, Fred T. Collins, who filed an application for survivor's benefits with the Department of Labor (DOL) on June 11, 1992. Director's Exhibit 1. The miner died on February 25, 1992. Director's Exhibit 57 (Miner's claim).

§901 *et seq.* The case is before the Board for the third time. The administrative law judge concluded that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and death due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Accordingly, the administrative law judge denied both claims.

The relevant procedural history is as follows: the miner filed his first claim with the Department of Labor on February 11, 1981, which was finally denied on October 27, 1981. Director's Exhibit 27. The miner then filed a second claim on September 12, 1983. Director's Exhibit 1. Administrative Law Judge Nicholas J. Laezza denied the claim in a Decision and Order dated October 25, 1988. Judge Laezza found that the evidence established the existence of pneumoconiosis at Section 718.202(a), but that the evidence failed to establish total respiratory disability pursuant to Section 718.204(c). Accordingly, benefits were denied on the miner's claim. Following the miner's appeal, the Board affirmed the administrative law judge's findings at Section 718.204(c), and thereby, affirmed the denial of benefits. *Collins v. Clinchfield Coal Co.*, BRB No. 88-3922 BLA (Sept. 27, 1990) (unpub.). The miner then filed a timely motion for modification with the administrative law judge on December 14, 1990. While this motion was pending, the miner died on February 25, 1992. The widow then filed a survivor's claim on June 11, 1992, and the two claims were consolidated. Director's Exhibit 1. Administrative Law Judge Sheldon R. Lipson found that the evidence failed to establish the existence of pneumoconiosis at Section 718.202(a) and failed to establish death due to pneumoconiosis at Section 718.205. Accordingly, both claims were denied in a Decision and Order dated September 30, 1994. Following claimant's appeal, the Board affirmed the administrative law judge's findings at Sections 718.202(a)(1)-(3), but vacated and remanded his finding at Sections 718.202(a)(4) and 718.205. *Collins v. Clinchfield Coal Co.*, BRB No. 95-0438 BLA (May 21, 1996) (unpub.). On remand, Administrative Law Judge Kichuk found that the evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(4) and failed to establish death due to pneumoconiosis at Section 718.205. Accordingly, the administrative law judge denied benefits.

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. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Antonio v. Bethlehem Mines Corp.*, 6 BLR 1-702 (1983). 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, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). Employer, in response, asserts that the administrative law judge's finding that the evidence fails to establish entitlement is supported by substantial evidence, and accordingly, it urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs,

has filed a letter indicating that he will not file a brief in the instant case.

The administrative law judge correctly summarized the six medical opinions of record and found that Drs. Smiddy, Kanwal and Robinette opined that claimant had pneumoconiosis; Dr. Fino determined that claimant did not have pneumoconiosis; Dr. Sargent originally opined possible pneumoconiosis, but later changed his diagnosis to state that claimant did not have pneumoconiosis and that Dr. Buddington assumed that claimant did not have pneumoconiosis. Director's Exhibits 8, 13, 15, 46, 54, 55; Employer's Exhibits 1, 2, 8, 25, 38; Decision and Order at 4-5. The administrative law judge permissibly discounted Dr. Smiddy's opinion on the basis that it was not well reasoned as it was not supported by the underlying documentation of record. Decision and Order at 5; *see McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). The administrative law judge also rationally accorded Dr. Kanwal's opinion no weight because he found it was based solely on a positive x-ray interpretation that was reread by four physicians with higher qualifications and the physician had provided no additional rationale for his diagnosis. Decision and Order at 5. He then permissibly found that Dr. Buddington's assumption that claimant did not have pneumoconiosis, lacked objective evidence to support it. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *McMath, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1989). After noting that Dr. Robinette was claimant's treating physician, the administrative law judge rationally accorded greater weight to Dr. Fino's opinion, that the miner did not have pneumoconiosis, than to the contrary opinion of Dr. Robinette because he found that Dr. Fino's opinion was better supported by the objective evidence of record, *see McMath, supra*; *Campbell, supra*, and he noted that Dr. Fino's superior qualifications enhanced his in-depth evaluations of the medical evidence. Decision and Order at 7; *see Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). We affirm, therefore, the administrative law judge's finding that the evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), as it is supported by substantial evidence. As this finding precludes entitlement in the miner's claim, *see Trent, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), as well in the survivor's claim pursuant to the Part 718 regulations, *see Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1985), we affirm the denial of benefits.²

² We need not address the administrative law judge's findings relative to Section 718.205, as they are rendered moot by our disposition of this case. *See Cochran v. Consolidation Coal Co.*, 16 BLR 1-101 (1992); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge