

BRB No. 97-1460 BLA

TREVA I. TAYLOR)	
(Widow of GEORGE P. TAYLOR))	
)	
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 of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Treva I. Taylor, Honaker, Virginia, *pro se*.

Timothy W. Gresham (Penn, Stuart, Eskridge & Jones), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order (96-BLA-1665) of Administrative Law Judge Edward Terhune Miller 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 noted that the parties stipulated to twenty-four years of coal mine employment and

¹ Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, filed an appeal on behalf of claimant but is not representing her in this appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge then considered the medical evidence of record and found that it failed to establish that the miner's death was due to, or hastened by, pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance. The Director, Office of Worker's Compensation Programs, has indicated that he will not respond to claimant's 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. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement in a survivor's claim, claimant must establish that the miner had pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis caused the miner's death. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204, 718.205; *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Furthermore, the United States Court of Appeals for the Fourth Circuit, wherein jurisdiction of this case arises, has held that any condition which actually hastens the miner's death is a substantially contributing cause of death for the purposes of Section 718.205. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

After consideration of the administrative law judge's Decision and Order 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. The administrative law judge considered all of the medical evidence of record regarding the cause of the miner's death, including the miner's death certificate and several autopsy reports. Decision and Order 3-6; Director's Exhibits 7-9; Employer's Exhibits 4, 9, 10, 14. The administrative law judge properly found that all of the medical reports attributed the miner's death to bronchopneumonia superimposed on leukemia, and did not state that pneumoconiosis was a cause of death pursuant to 20 C.F.R. §718.205(c)(1). Decision and Order at 7. The administrative law judge further properly concluded that although the medical opinions diagnosed simple coal workers' pneumoconiosis, no physician stated that pneumoconiosis was a contributing cause in the miner's death or hastened the miner's death in any manner pursuant to 20 C.F.R. §718.205(c)(2). *Id.* Lastly, the administrative law judge rationally found that claimant could not establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c)(3) inasmuch as the record did not contain any evidence of large opacities on x-ray or biopsy. The administrative law judge is empowered to weigh the

medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) as it is supported by substantial evidence and is in accordance with law. *See Shuff, supra; Neeley, supra.*

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge