

BRB No. 99-0239 BLA

MARY POZZUOLI)
(Widow of MARIO POZZUOLI))
)
Claimant-Petitioner))
)
v.)
)
)
AMBROSIA 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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Mary Pozzuoli, New Castle, Pennsylvania, *pro se*.

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

PER CURIAM:

Claimant, the miner's widow, without the assistance of counsel, appeals the Decision and Order (98-BLA-377) of Administrative Law Judge Michael P. Lesniak 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, and the parties stipulated to, at least ten and one-half years of qualifying coal mine employment, and based on the date of filing, considered entitlement pursuant to the provisions of 20 C.F.R. Part 718.¹ Decision and Order at 2-3; Hearing Transcript at 7. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.205. Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer has not filed a response brief. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this 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. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *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, supported by substantial evidence, and are in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 725.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The United States Court of Appeals for the Third Circuit has held that pneumoconiosis will be considered a substantially contributing cause of death when

¹The miner died on May 15, 1994. Director's Exhibit 6. Claimant filed her survivor's claim, the subject of the instant appeal, on May 9, 1995. Director's Exhibit 1.

it actually hastens the miner' s death.² See *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

²This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit as the miner worked in coal mine employment in Pennsylvania. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

After consideration of the administrative law judge's Decision and Order, 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. The administrative law judge, in the instant case, permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). See *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally concluded that the x-ray evidence failed to establish the existence of coal workers' pneumoconiosis pursuant to Section 718.202(a)(1) as he permissibly relied on the preponderance of negative x-ray readings.³ See *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 7; Director's Exhibits 12-15, 31, 33, 34; Employer's Exhibits 1-4. We, therefore, affirm the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) as it is supported by substantial evidence.⁴

³In setting forth the x-ray evidence of record, the administrative law judge properly noted that all of the x-rays were interpreted by physicians who were either B-readers or B-readers and Board-certified radiologists. Decision and Order at 3-4; Director's Exhibits 12-15, 31, 33, 34; Employer's Exhibits 1-4.

⁴We note that claimant cannot establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) as the record does not contain any biopsy or autopsy evidence. In addition, the presumptions enumerated at 20 C.F.R. §718.202(a)(3) are inapplicable to this claim as the record contains no evidence of complicated pneumoconiosis, claimant filed her claim after January 1, 1982, and the miner died after March 1, 1978. See 20 C.F.R. §§718.304, 718.305, 718.306.

Moreover, the administrative law judge considered the entirety of the medical opinion evidence of record and acted within his discretion in concluding that claimant failed to establish the existence of pneumoconiosis by a preponderance of the evidence pursuant to Section 718.202(a)(4). In weighing the medical opinion evidence and finding it insufficient to establish the existence of pneumoconiosis, the administrative law judge permissibly accorded little weight to the opinion of Dr. Sung, that the miner had a history of black lung disease, as the handwritten responses to the claims examiner's letters are devoid of reasoning since Dr. Sung's responses offer no explanation or objective basis for such a conclusion. See *Clark, supra*; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); *Piccin, supra*; Director's Exhibits 16, 17; Decision and Order at 7. Moreover, the administrative law judge rationally relied on the opinion of Dr. Fino, that the miner did not suffer from pneumoconiosis, as the administrative law judge, acting within his discretion as fact-finder, determined that this opinion was well-reasoned and well-documented. *Clark, supra*; *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-146 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Piccin, supra*; Decision and Order at 7; Employer's Exhibits 4, 5. 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, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Furthermore, since the determination of whether the miner had pneumoconiosis is primarily a medical determination, claimant's testimony alone, under the circumstances of this case, could not alter the administrative law judge's finding. 20 C.F.R. §718.202(a)(4); *Anderson, supra*. Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a) as it is supported by substantial evidence and is in accordance with law.⁵ See *Trumbo, supra*; *Clark, supra*.

Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement in a survivor's claim pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded and we need not address the administrative

⁵Claimant's assertion that employer should perform an autopsy on the miner is misplaced. It is the responsibility of the party seeking entitlement to develop and offer into the record any evidence necessary to establish the claim. See 20 C.F.R. §§718.402, 718.403; see generally *White v. Director, OWCP*, 6 BLR 1-368 (1983).

law judge's findings regarding death due to pneumoconiosis pursuant to 20 C.F.R. §718.205. See *Lukosevicz, supra*; *Trumbo, 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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge