BRB No. 00-0199 BLA

LENA MULLINS (Widow of MACADO MULLINS)	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED:
JEWEL RIDGE MINING CORPORATION/ SEA "B" MINING COMPANY	)	
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 - Denial of Benefits of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Lena Mullins, Pilgrim Knob, Virginia, *pro se*.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, the miner's widow, without the assistance of legal counsel,[1] appeals the Decision and Order (98-BLA-1079 and 98-BLA-1080) of Administrative Law Judge Daniel F. Sutton denying benefits on claims filed by the miner and his survivor 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 miner, Macado Mullins, filed his original claim for black lung benefits on May 10, 1989,

[1] Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

which was denied by the district director, who found that while the miner was totally disabled, the evidence failed to establish the existence of pneumoconiosis arising out of coal mine employment. Decision and Order at 3; Director's Exhibit 22. The miner filed the instant claim on May 24, 1996, and subsequently on July 1, 1996, while the claim was pending, the miner died. Decision and Order at 3; Director's Exhibits 8, 23. On January 27, 1998, the miner's widow, claimant herein, filed a survivor's claim. Decision and Order at 3; Director's Exhibit 1. Subsequently, both claims were consolidated. The district director denied both claims and the case was referred to the Office of Administrative Law Judges. The administrative law judge credited the miner with eleven years of coal mine employment and adjudicated the miner's duplicate claim and the survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718. With regard to the miner's claim, the administrative law judge found that the evidence submitted since the previous denial was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge thus found that the evidence was insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d) in the miner's claim. With respect to the survivor's claim, the administrative law judge found that as the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), entitlement was precluded. Accordingly, benefits were denied on both claims. On appeal herein, claimant generally contends that the administrative law judge erred in failing to award benefits in both claims. Employer did not file a response brief. The Director, Office of Workers' Compensation Programs, has not participated 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. *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, are supported by substantial evidence, and are 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).

In order to establish entitlement to benefits in a miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner suffered from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis was totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure of claimant to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Additionally, to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 on a survivor's claim filed after January 1,

1982, claimant must not only must establish that the miner suffered from pneumoconiosis and that the pneumoconiosis arose out of coal mine employment, but that the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 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).

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. Initially, in considering the miner's duplicate claim pursuant to 20 C.F.R. Part 718, the administrative law judge properly found that the newly submitted evidence failed to establish the existence of pneumoconiosis pursuant to any of the provisions contained in 20 C.F.R. §718.202(a). In his consideration of the x-ray evidence, 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 correctly found that none of the newly submitted x-ray readings was positive for the presence of pneumoconiosis. *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Trent*, *supra*; *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 4-5; Director's Exhibits 41-43, 60, 67-68. 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.

Further, in determining whether the existence of pneumoconiosis was established by autopsy evidence pursuant to Section 718.202(a)(2), the administrative law judge discussed the conclusions of Dr. Stefanini, the autopsy prosector, and Drs. Crouch, Caffrey and Tomashefski, who reviewed the medical evidence as well as the autopsy report and slides. Decision and Order at 5-6. In finding that the existence of pneumoconiosis was not established by the autopsy evidence pursuant to Section 718.202(a)(2), the administrative law judge permissibly credited the reports of Drs. Crouch, Caffrey and Tomashefski, which did not include a diagnosis of pneumoconiosis, over the report of Dr. Stefanini, since the latter physicians possessed superior qualifications and their reports were well-documented and well-reasoned. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); Decision and Order on Remand at 5-6. The administrative law judge thus rationally found that the autopsy evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and this finding is affirmed.

Gruller v. Bethenergy Mines, Inc., 16 BLR 1-3 (1991); *Fetterman v. Director, OWCP*, 7 BLR 1-688 (1985); *Simila v. Bethlehem Mines Corp.*, 7 BLR 1-535 (1984), *vacated in part on other grounds sub nom.*, *Bethlehem Mines Corp. v. Director, OWCP*, 766 F.2d 128, 8 BLR 2-4 (3d Cir. 1985).

In addition, the administrative law judge correctly found that the presumptions enumerated at Section 718.202(a)(3) are inapplicable to this claim as the record contains no evidence of complicated pneumoconiosis, *see* 20 C.F.R. §718.304; the miner filed his claim after January 1, 1982, *see* 20 C.F.R. §718.305; and the miner did not Director's Exhibit prior to March 1978. *See* 20 C.F.R. §718.306; Decision and Order at 7. Consequently, we affirm the administrative law judge's finding that claimant is precluded from establishing the existence of pneumoconiosis pursuant to Section 718.202(a)(3).

In weighing the newly submitted medical opinions of record on the issue of the existence of pneumoconiosis pursuant to Section 718.202(a)(4), the administrative law judge also rationally concluded that this evidence failed to establish the existence of pneumoconiosis by a preponderance of the evidence. *Perry*, *supra*. In so finding, the administrative law judge acted within his discretion as fact-finder in concluding that the opinion of Dr. Javed, the miner's treating physician who diagnosed pneumoconiosis, but did not indicate how he reached his conclusion, was outweighed by the contrary opinions of Drs. Castle and Fino, as well as the reports of Drs. Crouch, Caffrey and Tomashefski, based on the documentation and reasoning contained in their reports. *Clark*, *supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-146 (1985); Decision and Order at 7-9. 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). Furthermore, since the determination of whether the miner had pneumoconiosis is primarily a medical determination, claimant's testimony, 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*. Inasmuch as the administrative law judge weighed all of the newly submitted medical opinions and rationally concluded that the preponderance of the evidence did not establish the existence of pneumoconiosis, we affirm his finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *See Clark*, *supra*; *Wetzel*, *supra*; *Lucostic*, *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.

In adjudicating the survivor's claim which was filed by claimant after January 1, 1982, the administrative law judge properly required claimant to establish that the miner suffered from pneumoconiosis, *see* 20 C.F.R. §718.202(a), and that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) in order to establish entitlement to survivor's benefits. *See* 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The administrative law judge correctly found that as claimant failed to establish the existence of pneumoconiosis, as discussed above and after his consideration of the evidence of record as a whole, she cannot establish that the miner's death was due to pneumoconiosis. *Trumbo*, *supra*; Decision and Order at 10. Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement under 20 C.F.R. Part 718, entitlement thereunder is precluded. *See Trumbo*, *supra*; *Neeley*, *supra*; *Trent*, *supra*. Consequently, we affirm the administrative law judge's denial of benefits in the survivor's claim as well.

Accordingly, the Decision and Order - Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge