

BRB No. 99-1156 BLA

PHYLLIS HANNAH)
(Widow of WILLIAM HANNAH))
)
Claimant-Petitioner)
)
v.)
)
MOUNTAINTOP RESTORATION, INC.)
)
and)
)
OLD REPUBLIC INSURANCE COMPANY)
)
Employer/Carrier-)
Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Phyllis Hannah, Denver, Kentucky, *pro se*.

John D. Maddox (Arter & Hadden, LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant, the miner's widow and without the assistance of counsel, appeals the Decision and Order (98-BLA-0473) of Administrative Law Judge Daniel J. Roketenetz denying benefits on claims filed by the miner and 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 administrative law judge found, and the parties stipulated to, ten years of coal mine employment and, based on the date of filing, adjudicated the claims pursuant to 20

C.F.R. Part 718.¹ Decision and Order at 3-4; Hearing Transcript at 12. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied in both claims. On appeal, claimant generally contends that the evidence is sufficient to establish entitlement to benefits. Employer responds, urging affirmance of the denial of benefits. 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 findings of fact and conclusions of law if they are rational, supported by substantial evidence, and consistent with applicable law. 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).

¹Claimant is Phyllis Hannah, the miner's widow. The miner, William Hannah, filed his application for benefits on September 13, 1996, which was denied by the district director on January 28, 1997. Director's Exhibits 1, 17. A request for a hearing was made on March 17, 1997. Director's Exhibit 18. The miner died on April 14, 1997 and claimant filed a survivor's claim on July 16, 1997. Director's Exhibits 35, 47.

In order to establish entitlement to benefits in the miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner suffered from pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis was totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to prove any of these requisite elements compels a denial of benefits. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Additionally, 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 Sixth Circuit has held that pneumoconiosis will be considered a substantially contributing cause of death when it actually hastens the miner's death.² See *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 1-135 (6th Cir. 1993).

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 administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error 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). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally concluded that the x-ray evidence of record was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) as the preponderance of x-ray readings by physicians with superior qualifications was negative. Director's Exhibits 13-15, 27-29, 31-34, 49-61; Employer's Exhibits 1, 2, 5; Claimant's Exhibit 1; Decision and Order at 4-5; *Staton v. Norfolk & Western Railroad Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988)(*en banc*); *Trent, supra*; *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). We, therefore, affirm the administrative law judge's finding that the x-

²This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner was employed in the coal mine industry in the Commonwealth of Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

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, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) since the record does not contain any biopsy results demonstrating the presence of pneumoconiosis. Director's Exhibits 9, 12; Employer's Exhibits 3, 4; Decision and Order at 6-7. Additionally, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(3) since none of the presumptions set forth therein are applicable to the instant claim.³ See 20 C.F.R. §§718.304, 718.305, 718.306; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986); Decision and Order at 7.

With respect to 20 C.F.R. §718.202(a)(4), the administrative law judge properly considered the entirety of the medical opinion evidence of record and permissibly accorded greater weight to the preponderance of the medical opinions which stated that claimant did not have pneumoconiosis or any other occupationally acquired pulmonary condition, than to the contrary opinion of Dr. Sundaram, as the physician's opinion is not well-documented and well-reasoned since Dr. Sundaram does not explain his diagnosis of pneumoconiosis other than the reliance upon his own chest x-ray, some of his reports incorrectly indicate that the miner was a nonsmoker, the physician relied upon an inaccurate coal mine employment history and the pulmonary function study that Dr. Sundaram relied upon was found to be invalid. See *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Perry, 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 1-46 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Long v. Director, OWCP*, 7 BLR 1-254 (1988); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); *Piccin, supra*; Decision and Order at 10; Director's Exhibits 8, 10-12, 27, 29, 45, 50; Employer's Exhibits 3, 4, 6-8; Claimant's Exhibit 1. Additionally, the administrative law judge noted that Dr. Sundaram was the miner's treating physician, but also provided valid reasons for finding his opinion entitled to less weight. See *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir.

³The presumption at 20 C.F.R. §718.304 is inapplicable because there is no evidence of complicated pneumoconiosis in the record. Claimant is not entitled to the presumption at 20 C.F.R. §718.305 because the claims were filed after January 1, 1982. See 20 C.F.R. §718.305(e); Director's Exhibits 1, 37. Lastly, the presumption at 20 C.F.R. §718.306 is also inapplicable as the miner did not die prior to March 1, 1978.

1993); *Wetzel, supra*; Decision and Order at 7-10.

The administrative law judge is empowered to weigh the medical opinion evidence of record 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 claimant 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.

Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement in both a miner's claim and a survivor's claim pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded. *See Griffith, supra*; *Brown, supra*; *Trumbo, supra*; *Kneel v. Director, OWCP*, 11 BLR 1-85, 1-86 (1988); *Trent, supra*; *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Perry, supra*.

Accordingly, the administrative law judge's Decision and Order denying benefits in both the miner's and survivor's claims is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge