

BRB No. 99-1261 BLA

NANCY ELIZABETH LETCHER)
(Widow of WILLIAM LETCHER))
)
Claimant-Petitioner)

v.)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Nancy Elizabeth Letcher, Johnson City, Tennessee, *pro se*.

Barry H. Joyner (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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-913) of Administrative Law Judge Mollie W. Neal denying benefits in 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).¹ The

¹ Claimant is Nancy Elizabeth Letcher, the miner's widow. The miner, William Letcher, filed a claim for benefits with the Social Security Administration on April 31, 1970, and while this claim was pending filed a claim with the Department of Labor on July 15, 1975. Director's Exhibit 11. These claims were merged and finally denied on February 13, 1989. Director's Exhibits 11,30, 33, 36, 40. The miner took no further action. The miner died on October 1, 1996 and claimant filed her survivor's claim on June 24, 1997. Director's

administrative law judge found, and the parties stipulated to, nineteen and one-half years of qualifying coal mine employment, and based on the date of filing, considered entitlement in this survivor's claim pursuant to 20 C.F.R. Part 718. Decision and Order at 2-4. The administrative law judge, after considering all of the evidence of record, concluded that claimant failed 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. Decision and Order at 6-11. Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. The Director, Office of Workers' Compensation Programs, responds urging affirmance of the administrative law judge's Decision and Order as the denial of benefits is supported by substantial evidence.

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).

Exhibits 1, 3.

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 Fourth Circuit² has held that pneumoconiosis will be considered a substantially contributing cause of death when it actually hastens the miner's death. *See 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, 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 rationally found that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *See Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The relevant evidence of record concerning the cause of death consists of only the death certificate. The death certificate, signed by Dr. B.E. Dossett, listed the cause of death as "Natural-Undetermined" with carcinoma of the prostate and arteriosclerotic cardiovascular disease as contributing conditions to death. Director's Exhibit 3. The administrative law judge properly considered this evidence and rationally concluded that it was insufficient to establish claimant's burden of proof pursuant to 20 C.F.R. §718.205(c) as it does not indicate that the miner's death was in any way related to pneumoconiosis.³ *See Shuff, supra*; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Director's Exhibit 3; Decision and Order at 10-11. The administrative law judge is empowered to weigh the medical evidence and to draw her 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 the evidence of record is insufficient to establish that the miner's death was due to

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

³ The administrative law judge properly found that the presumption at 20 C.F.R. §718.304 is not applicable in this case as the record indicates that there is no evidence of complicated pneumoconiosis contained therein. *See* 20 C.F.R. §718.205(c)(3); Decision and Order at 6.

pneumoconiosis pursuant to Section 718.205 as it is supported by substantial evidence and is in accordance with law. *See Shuff, supra; Neeley, supra; Trumbo, supra.*

Inasmuch as claimant has failed to establish that the miner's death was due to 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 law judge's findings regarding the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *See Shuff, supra; Trumbo, supra; Neeley, supra.*

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge