

BRB No. 00-1156 BLA

DOROTHY A. HAMILTON)	
(Widow of JAMES H. HAMILTON))	
)	
Claimant-Petitioner)	
v.)	DATE ISSUED:
)	
CLINCHFIELD COAL 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 - Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Dorothy A. Hamilton, St. Paul, Virginia, *pro se*.

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

Timothy S. Williams (Howard M. Radzely, Acting 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: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, without the assistance of legal counsel,¹

appeals the Decision and Order (1999-BLA-1182) of Administrative Law Judge Rudolf L. Jansen 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).² The miner, James H. Hamilton, filed his original claim for black lung benefits on December 10, 1990, which was denied by the district director. The miner filed the instant claim on April 7, 1998, and was awarded benefits by the district director on August 19, 1998. Subsequently, on September 5, 1998, the miner died. On September 11, 1998, the miner's widow, claimant herein, filed a survivor's claim, which the district director denied. Subsequently, at the request for a hearing by employer and claimant, both claims were consolidated and referred to the Office of Administrative Law Judges. The administrative law judge credited the miner with thirty-five 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 (2000). With regard to the miner's claim, the administrative law judge initially found that there was no dispute that the miner became totally disabled and demonstrated a material change in conditions. See 20 C.F.R. §725.309(d) (2000). The administrative law judge found, however, that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). 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) (2000), 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 urges affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief regarding the merits 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 (2000). 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*).

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 evidence failed to establish the existence of pneumoconiosis pursuant to any of the provisions contained in 20 C.F.R. §718.202(a) (2000). In his consideration of the x-ray evidence, the administrative law judge listed the seventy-seven x-ray readings of the twenty x-rays contained in the record. Decision and Order at 4-8; Director's Exhibits 8, 11-12, 18, 20-27, 35-36, 39, 42-43; Claimant's Exhibits 1, 4-5; Employer's Exhibits 1-14, 17-18. The administrative law judge permissibly accorded greater weight to the x-ray interpretations of the readers with superior qualifications and to the preponderance of negative x-ray readings. *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order at 12. The administrative law judge noted there was only one positive reading by a dually qualified B reader and Board-certified radiologist, whereas there were thirty-three negative readings by dually qualified B readers and Board-certified radiologists. Decision and Order at 12. Assigning greatest weight to the dually qualified B readers and Board-certified radiologists, the administrative law judge reasonably found that the x-ray interpretations by the readers with superior qualifications failed to support a finding of pneumoconiosis. Decision and Order at 12-13. 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) (2000) as it is supported by substantial evidence.

Further, the administrative law judge properly concluded that the provisions of Section 718.202(a)(2) (2000) and the presumptions enumerated at Section 718.202(a)(3) (2000) are inapplicable to this claim as the record contains no biopsy evidence or evidence of complicated pneumoconiosis, see 20 C.F.R. §718.304 (2000); claimant filed his claim after January 1, 1982, see 20 C.F.R. §718.305 (2000); and this is not a survivor's claim filed before June 30, 1982. See 20 C.F.R. §718.306 (2000); Decision and Order at 13.

In weighing the medical opinions of record on the issue of the existence of pneumoconiosis pursuant to Section 718.202(a)(4) (2000), 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*. The administrative law judge reasonably accorded diminished weight to the opinions of Drs. Paranthaman, Michos and Smiddy since they were either equivocal or failed to account for the miner's extensive smoking history.³ *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 8-14; Director's Exhibits 8, 11, 13, 15-16, 19, 37, 41-43; Claimant's Exhibit 6; Employer's Exhibits 15, 19-20. Moreover, the administrative law judge acknowledged that Drs. Robinette, Fino and Castle possessed superior qualifications and issued well-documented and well-reasoned reports, but was not persuaded by the medical reports diagnosing pneumoconiosis when considered with the other contrary credited opinions. *Id.* The administrative law judge acted within his discretion as fact-finder in concluding that there was no basis in the record to credit the opinions of Drs. Robinette, Smiddy, Michos and Paranthaman, who diagnosed pneumoconiosis, over the contrary opinions of Drs. Castle and Fino. *Id.*

Claimant has the general burden of establishing entitlement and bears the risk of non-persuasion if his evidence is found insufficient to establish a crucial element. *See Trent, supra; Perry, supra; Oggero, supra; White v. Director, OWCP*, 6 BLR 1-368 (1983). 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) (2000); *Anderson, supra*. Inasmuch as the administrative law judge weighed all of the 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) (2000) as it is supported by substantial evidence and is in accordance with law. *See Clark, supra; Wetzel, supra; Lucostic, supra*. Moreover, we note that the administrative law judge correctly concluded, after weighing all the evidence together, that claimant failed to establish the existence of pneumoconiosis. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2- (4th Cir. 2000); Decision and Order at 14. Consequently, we affirm the administrative law judge's denial of benefits on the miner's claim.

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 establish that the miner suffered from pneumoconiosis that arose out of his coal mine employment, *see 20*

C.F.R. §§718.202(a), 718.203 (2000), and that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) (2000). See 20 C.F.R. §§718.1, 718.205(c) (2000); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); see also *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993). The administrative law judge correctly found that as claimant failed to establish the existence of pneumoconiosis on the miner's claim, the evidence is insufficient to establish that the miner's death was due to pneumoconiosis. *Trumbo, supra*; Decision and Order at 14. 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 - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge