

BRB No. 97-1769 BLA

GEORGIA BALDWIN)	
(Widow of ROLIE BALDWIN))	
)	
Claimant-Petitioner))
)	
v.)	
)	
GLAMORGAN COAL CORPORATION)	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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Georgia Baldwin, Wise, Virginia, *pro se*.

H. Ashby Dickerson (Penn, Stuart, Eskridge & Jones), Abingdon, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, without the assistance of counsel,¹ appeals the Decision and Order (97-BLA-296) of Administrative Law Judge Daniel L. Leland

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

denying benefits on a 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). Considering entitlement pursuant to 20 C.F.R. Part 718, the administrative law judge considered the evidence of record and determined that it failed to establish that the miner had suffered from pneumoconiosis prior to his death.² Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in his findings. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs has indicated 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. See *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that death was caused by complications of pneumoconiosis and that pneumoconiosis arose out of coal mine employment.³ See 20 C.F.R. §§718.205(c), 718.202(a), 718.203; *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's Decision

² Claimant filed her application for survivor's benefits on April 17, 1995. Director's Exhibit 1.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

and Order denying benefits is supported by substantial evidence and contains no reversible error therein. Initially, the administrative law judge reviewed the x-ray evidence of record and found that it contained forty interpretations of fourteen x-rays. The administrative law judge noted that only two readings were positive for pneumoconiosis, but that these interpretations were outweighed by three negative readings by physicians who were dually qualified as both B-readers and board-certified radiologists. The administrative law judge found that the majority of the dually qualified physicians opined that the x-ray evidence was negative for pneumoconiosis and concluded that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). As the administrative law judge permissibly found that the negative x-ray readings by dually qualified physicians outweighed the two positive readings, of which one was by a dually qualified physician, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(1). See *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Goss v. Eastern Associated Coal Corp.*, 7 BLR 1-400 (1984).

The administrative law judge properly concluded that none of the biopsy reports indicate the presence of pneumoconiosis, and that an autopsy had not been performed. Thus, the administrative law judge appropriately concluded that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Director's Exhibit 9. Furthermore, the administrative law judge properly determined that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(3) as the presumptions at 20 C.F.R. §§718.305 and 718.306 were inapplicable, and claimant was ineligible for the presumption at 20 C.F.R. §718.304 as the biopsy reports did not indicate the presence of massive lesions in the miner's lungs.

Lastly, the administrative law judge found that at 20 C.F.R. §718.202(a)(4), Dr. Paranthaman was the only physician to diagnose the presence of coal workers' pneumoconiosis. The administrative law judge found that this opinion was outweighed by the opinions of Drs. Dahhan and Fino, who are both board certified in internal medicine and pulmonary diseases.⁴ As the administrative law judge acted

⁴ Dr. Dahhan first examined the miner on December 21, 1992. His opinion that the miner did not suffer from pneumoconiosis was based on the miner's employment, medical and smoking histories, as well as x-ray, pulmonary function and blood gas studies, and a review of the miner's medical records. On May 14, 1993, Dr. Dahhan wrote a supplemental opinion based on his review of additional medical records. He reiterated his finding of no pneumoconiosis and no evidence of pulmonary impairment related to coal dust exposure, and noted that the miner's x-

within his discretion in finding Dr. Paranthaman's opinion outweighed by the majority of physicians who did not diagnose pneumoconiosis and permissibly accorded determinative weight to Drs. Dahhan and Fino on the basis of the physicians' superior credentials, we affirm the administrative law judge's finding that the medical opinion evidence does not support a finding of pneumoconiosis pursuant to Section 718.202(a)(4). See *Trumbo, supra*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Trent, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Perry, supra*. 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). Inasmuch as claimant failed to establish the existence of pneumoconiosis, we affirm the administrative law judge's denial of benefits in this survivor's claim. 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

ROY P. SMITH
Administrative Appeals Judge

ray was highly suspicious for lung cancer. Director's Exhibit 35.

Dr. Fino reviewed all of the miner's medical records and concluded that there was insufficient objective medical evidence to justify a diagnosis of simple coal workers' pneumoconiosis. Dr. Fino also noted that the abnormalities in the miner's chest x-ray was a possible malignancy. Director's Exhibit 35.

JAMES F. BROWN
Administrative Appeals Judge