

BRB No. 97-1778 BLA

BETTY HAVRILESKO)	
(Widow of JOHN HAVRILESKO))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BETHENERGY MINES, INCORPORATED)	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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Donna M. Lowman, (United Mine Workers' of America), Belle Vernon, Pennsylvania, for claimant.

Carl J. Smith, Jr. (Richman & Smith), Washington, Pennsylvania, for employer.

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

PER CURIAM:

Claimant, widow of the deceased miner, appeals the Decision and Order (96-BLA-1631) of Administrative Law Judge Michael P. Lesniak denying benefits on 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). The administrative law judge found at least twenty-six years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part

718.¹ Decision and Order at 2. The administrative law judge concluded that the evidence of record was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (4), but insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant contends that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis. Employer responds, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in this appeal.²

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is 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 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 the pneumoconiosis arose out of coal mine employment; and that the miner's death was due to, or substantially contributed to, pneumoconiosis. See 20 C.F.R. §§718.1, 718.205, 725.201; *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1993); *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 administrative law judge's Decision and Order is supported by substantial evidence

¹ The miner, John Havrilesko, died on July 21, 1995. Director's Exhibit 12. Claimant filed her claim for benefits on August 8, 1995. Director's Exhibit 1.

² We affirm the administrative law judge's length of coal mine employment determination and his findings pursuant to 20 C.F.R. §718.202(a)(2) and (4) as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

and contains no reversible error therein. Claimant initially contends that the administrative law judge erred in finding that the death certificate was insufficient to establish that pneumoconiosis contributed to the miner's death. The death certificate, completed by Dr. Changco, listed the immediate cause of death as cardiac arrest due to congestive heart failure due to severe coronary artery disease, with chronic obstructive lung disease and pneumoconiosis listed as other significant contributing conditions. Director's Exhibit 12. Contrary to claimant's contention, the administrative law judge permissibly found the death certificate not well reasoned and unreliable as Dr. Changco's credentials are unknown and as the basis of the diagnosis is not provided. Decision and Order at 16; *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). The administrative law judge, in the instant case, acted within his discretion, as trier-of-fact, in finding the death certificate unreliable and insufficient to meet claimant's burden of proof as it lacks supporting explanation or documentation. *Lango, supra*; *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). We, therefore, affirm the administrative law judge's weighing of the death certificate as it is supported by substantial evidence.

Claimant also asserts that the administrative law judge erred in according less weight to the opinion of Dr. Wecht, the autopsy prosector. We disagree. The administrative law judge permissibly accorded greater weight to the opinions of Drs. Mendelow and Fino, finding that pneumoconiosis did not cause, contribute to or hasten the miner's death, than to Dr. Wecht's opinion that pneumoconiosis substantially contributed to the miner's death, as their opinions were better explained and supported by the objective evidence of record. Director's Exhibit 13; Claimant's Exhibit 3; Employer's Exhibits A, C-E, K; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Goss v. Eastern Associated Coal Corp.*, 7 BLR 1-400 (1984); *Cosalter v. Mathies Coal Co.*, 6 BLR 1-145 (1984). Additionally, the administrative law judge rationally accorded greatest weight to Dr. Fino's opinion, that based on the pulmonary function studies and arterial blood gas studies, there is no objective evidence which would support a theory that pneumoconiosis placed a burden on this miner's heart or contributed to his death in any way, in light of his superior credentials as a pulmonologist. *Dillon, supra*; *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel, 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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's denial of benefits in this survivor's claim as it is supported by substantial evidence and is in accordance with law. *Lukosevicz, supra*; *Trumbo, supra*.

Inasmuch as claimant has failed to establish that the miner's death was due to pneumoconiosis, a requisite element of entitlement for a survivor's claim pursuant to Part 718, entitlement thereunder is precluded. *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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge