

BRB No. 96-1084 BLA

BERNICE MOSER)	
(Widow of CARL MOSER))	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Frank D. Marden, Administrative Law Judge, United States Department of Labor.

Debra A. Smith (Krasno, Krasno & Quinn Law Offices), Pottsville, Pennsylvania, for claimant.

Helen H. Cox (J. Davitt McAteer, 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: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (95-BLA-01607) of Administrative Law Judge Frank D. Marden 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 noted that the parties stipulated that the miner had eleven years of qualifying coal mine

¹Claimant is Bernice Moser, the miner's widow. The miner, Carl Moser, filed a claim for benefits on February 10, 1993 and died on March 30, 1994. Director's Exhibits 1, 23. Claimant filed a survivor's claim on June 22, 1994. Director's Exhibit 28.

employment and pneumoconiosis which arose from his coal mine employment. The administrative law judge found however that claimant failed to establish that the miner had total respiratory disability pursuant to 20 C.F.R. §718.204(c) death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied on both claims. On appeal, claimant contends that the administrative law judge erred in invalidating a pulmonary function study dated September 13, 1993, and in weighing the evidence pursuant to Sections 718.204(c) and 718.205(c). The Director, Office of Workers' Compensation Programs (the Director), responds urging affirmance of the administrative law judge's Decision and Order.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

In order to establish entitlement pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

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 findings of fact and conclusions of law are supported by substantial evidence and contain no reversible error therein. Claimant initially contends that the administrative law judge erred in invalidating Dr. Mathur's pulmonary function study of September 13, 1993 on the basis of Dr. Mathur's failure to rate the miner's comprehension and cooperation. Claimant contends that Dr. Mathur indicated on the tracings that the miner's comprehension and cooperation were good. Claimant's Brief at 3. The administrative law judge stated:

I also accept Dr. Sahillioglu's and Dr. Spagnolos' (sic) invalidation of the September 13, 1993 study as Dr. Mathur did not rate the Miner's comprehension and cooperation, Drs. Sahillioglu and Spagnolo provided well-reasoned explanations of the study's invalidity, the Claimant did not provide any rebuttal to these reviews, Dr. Sahillioglu is board-eligible in internal and pulmonary medicine, and Dr. Spagnolo is board-certified in those fields.

Decision and Order at 4.

Claimant is correct that the administrative law judge erred in finding that Dr. Mathur did not rate the miner's comprehension and cooperation. However, the administrative law judge provided additional valid rationale for according more weight to the invalidation evidence, *i.e.*, well-reasoned opinion and expertise. Decision and Order at 4. Because the administrative law judge may rely upon the opinion of a reviewing physician and a physician with greater credentials, we affirm the administrative law judge's weighing of the pulmonary function study evidence pursuant to Section 718.204(c)(1). See *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990)(*en banc* recon.); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

Claimant also contends that the administrative law judge erred in weighing the medical opinion evidence of record pursuant to Section 718.204(c). The record contains four medical opinions. Dr. Mathur, in reports dated September 30, 1993 and September 16, 1994, opined that the miner was totally disabled due to pneumoconiosis. Director's Exhibits 30, 39. Dr. Ahluwalia, in a report dated April 22, 1993, diagnosed mild impairment. Director's Exhibit 9. Dr. Naeye, in a report dated October 13, 1994, stated that coal workers' pneumoconiosis was "far to mild to have produced impairments in lung function that would have prevented this man from doing hard physical work in the coal mining industry." Director's Exhibits 31, 32. Dr. Spagnolo, in a report dated October 22, 1994, opined that pneumoconiosis "was not the cause of a significant lung impairment." Director's Exhibit 34.

The administrative law judge considered all of the medical reports and noted that Dr. Mathur was the miner's treating physician for less than one year and that his qualifications were not in the record and permissibly placed greatest weight on Dr. Ahluwalia's opinion because of his superior credentials and because his opinion was well-documented and supported by the objective medical evidence of record. Decision and Order at 6-7; *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon, supra*; *Wetzel, supra*; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985). The administrative law judge further found the opinions of Drs. Naeye and Spagnolo supported Dr. Ahluwalia's report. As the administrative law judge's findings are supported by substantial evidence, we affirm the administrative law judge's findings that claimant failed to establish that the miner suffered from total respiratory disability pursuant to Section 718.204(c)(4) and the denial of benefits on the miner's claim.

Claimant further contends that the administrative law judge erred in weighing the opinions of Drs. Mathur and Barley pursuant to Section 718.205(c). In a survivor's claim filed after January 1, 1982, the evidence must establish that the miner's death was due

to pneumoconiosis, and not due to a medical condition unrelated to pneumoconiosis. See *Willis v. Birchfield Mining Co.*, 15 BLR 1-59 (1991); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Under Section 718.205(c), death is considered to be due to pneumoconiosis where the cause of death was significantly related to or significantly aggravated by pneumoconiosis. *Foreman v. Peabody Coal Co.*, 8 BLR 1-371 (1985). The United States Court of Appeals for the Third Circuit, within whose jurisdiction this claim arises, held that any condition that actually hastens the miner's death is a substantially contributing cause of death for purposes of Section 718.205. *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989); see also *Shuff v. Cedar Coal Co.*, 969 F.2d 977, 16 BLR 2-90 (4th Cir. 1992); *Tackett v. Armco, Inc.*, 17 BLR 1-103 (1993).

The miner's death certificate, completed by Dr. Barley, lists simple coal workers' pneumoconiosis as a significant condition contributing to death. Director's Exhibit 23. Dr. Mathur opined that pneumoconiosis was a significant contributing factor in the miner's death. Director's Exhibit 39. The record also contains the opinion of Dr. Naeye that the miner's pneumoconiosis was too mild to have reduced the level of oxygen in his blood, increased the work of his heart or to have hastened his death and that death was apparently due to a sudden cardiac arrhythmia, the consequence of severe arteriosclerotic coronary artery disease. Director's Exhibit 31.

The administrative law judge permissibly assigned less weight to Dr. Barley's opinion because it was unreasoned and undocumented. Decision and Order at 8; *Lafferty, supra*; *Clark, supra*; *Luconstic, supra*; *Peskie, supra*. Additionally, the administrative law judge rationally assigned less weight to Dr. Mathur's opinion due to his reliance on an invalid pulmonary function study and his conclusion that the miner had been totally disabled by pneumoconiosis in his lifetime. Decision and Order at 8-9; *Lafferty, supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Dillon, supra*. Further, the administrative law judge permissibly assigned greatest weight to Dr. Naeye's opinion due to his superior credentials and because his opinion was supported by the opinions of Drs. Bindie and Spagnolo, neither of whom opined that the miner's death was due to pneumoconiosis. Decision and Order at 8; *Scott, supra*; *McMath, supra*; *Dillon, supra*; *Martinez, supra*; *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, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent, supra*; *Perry, supra*. Thus, as the administrative law judge's findings are supported by substantial evidence, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) and the denial of benefits on the survivor's claim.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge