

BRB No. 96-1263 BLA

JUANITA CATHER	)		
(Widow of LESTER CATHER)	)		
	)		
Claimant-Petitioner	)		
	)		
v.	)		
	)		
ISLAND CREEK COAL COMPANY	)		
	)	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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

James H. Coleman, Charleston, West Virginia, for claimant.

John W. Walters (Jackson & Kelly), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order (93-BLA-1497) of Administrative Law Judge Donald W. Mosser denying benefits on the miner's and survivor's claims 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 that the miner had three and three-quarter years of qualifying coal mine employment, that employer conceded the existence of pneumoconiosis and total respiratory disability, however, claimant failed to establish that the miner was totally disabled due to

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<sup>1</sup>Claimant is Juanita Cather, the miner's widow, who filed a survivor's claim for benefits on June 12, 1992. Director's Exhibit 38. The miner, Lester Cather, filed a claim for benefits on September 6, 1990 and died on June 29, 1991. Director's Exhibits 1, 44.

pneumoconiosis pursuant to 20 C.F.R. §718.204(b) or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Accordingly, benefits were denied on both the miner's and survivor's claim. On appeal, claimant contends that the administrative law judge erred in weighing the evidence of record pursuant to Sections 718.204(b) and 718.205. Employer responds urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate on appeal.<sup>2</sup>

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 in the miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner 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). In a survivor's claim filed after January 1, 1982, the evidence must establish that the decedent miner's death was due to, or hastened by, pneumoconiosis. See *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Willis v. Birchfield Mining Co.*, 15 BLR 1-59 (1991); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

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<sup>2</sup>We affirm the administrative law judge's findings regarding the miner's coal mine employment and the existence of pneumoconiosis and total respiratory disability as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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. Initially, claimant, citing the holdings of the United States Court of Appeals for the Fourth Circuit in *Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994) and *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995), contends that the administrative law judge erred in crediting the opinions of physicians who failed to diagnose pneumoconiosis, and who opined that pneumoconiosis could not cause obstructive airways disease. Claimant's Brief at 12-13. We disagree. The record contains the opinions of eleven physicians, only one of whom, Dr. Clarke, opined that the miner was totally disabled due to his pneumoconiosis. Hearing Transcript at 8-80; Director's Exhibits 34, 35, 45, 47, 64-66, 69, 74; Employer's Exhibits 3, 5, 6, 11, 12, 17. In finding that claimant failed to establish that the miner was totally disabled due to pneumoconiosis pursuant to Section 718.204(b), the administrative law judge rationally found that Dr. Clarke's opinion was outweighed by the opinion of Dr. Jarboe, that the miner's disability was due to his cigarette smoking and was not related to his pneumoconiosis or his coal mine employment, as well as the opinions of the physicians who corroborated Dr. Jarboe's opinion, on the basis of their superior qualifications. See *Parulis v. Director, OWCP*, 15 BLR 1-28 (1991); *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). Contrary to claimant's contention, Dr. Jarboe opined that claimant had pneumoconiosis, but stated that the pneumoconiosis was minimal. Hearing Transcript at 58-61. Further, Dr. Jarboe's statement that "the miner's obstructive pattern is more typical of what shows up in smokers as opposed to coal workers" is not a statement that pneumoconiosis can never cause an obstructive defect. *Id.* Thus, we reject claimant's arguments regarding the administrative law judge's weighing of the medical opinion evidence pursuant to Section 718.204(b).<sup>3</sup>

Next, claimant generally contends that the administrative law judge erred in finding that claimant failed to establish death due to pneumoconiosis pursuant to Section 718.205. Pursuant to Section 718.205(c), the administrative law judge considered the medical opinion evidence and rationally found that Dr. Kleiner's opinion that claimant's pneumoconiosis did not contribute in any way to claimant's death was entitled to greater weight than the opinion of Dr. Clarke that the miner's death was due to pneumoconiosis,

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<sup>3</sup>Claimant contends that the administrative law judge erred in failing to consider Dr. Clarke's status as claimant's treating physician. Claimant's Brief at 16-17. We reject this contention, however, because the record does not contain evidence that Dr. Clarke was claimant's treating physician. Director's Exhibit 47.

due to Dr. Kleinerman's superior qualifications. Decision and Order at 9; Director's Exhibits 69, 74; see *Parulis, supra*; *McMath, supra*; *Dillon, supra*; *Martinez, supra*; *Wetzel, supra*. The administrative law judge also permissibly found that Dr. Kleinerman's opinion is corroborated by the opinions of Drs. Caffrey, Hansbarger, Crouch and Naeye. Decision and Order at 9; Director's Exhibits 64-66; Employer's Exhibits 3, 6, 7, 17; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). 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, supra*. Consequently, we affirm the administrative law judge's findings that claimant failed to establish that the miner's total disability was due to pneumoconiosis pursuant to Section 718.204(b) and that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) as supported by substantial evidence. Thus, we affirm the denial of benefits on both the miner's and the survivor's claims.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge