

BRB No. 96-1282 BLA

LOUISE A. HARMAN)	
(Widow of MANDLE HARMAN))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
U.S. STEEL MINING 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 Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle), Pineville, West Virginia, for claimant.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (95-BLA-136) of Administrative Law Judge Jeffrey Tureck 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). The administrative law judge found that the miner had forty-five years of qualifying coal mine employment and that claimant failed to establish that the miner had pneumoconiosis pursuant to 20

¹Claimant is Louise A. Harman, the miner's widow, who filed a survivor's claim for benefits on January 28, 1994. Director's Exhibit 1. The miner, Mandle Harman, died on December 1, 1993. Director's Exhibit 6.

C.F.R. §718.202(a) and that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in weighing the evidence of record pursuant to Sections 718.202(a) and 718.205. Employer is not participating on appeal. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate.

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 a survivor's claim filed after January 1, 1982, the evidence must establish that the decedent 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). Claimant contends that the administrative law judge erred in finding that claimant failed to establish death due to pneumoconiosis pursuant to Section 718.205. We disagree. The evidence of record regarding the cause of the miner's death consists of the death certificate and two medical opinions, all submitted by Dr. Carr. Director's Exhibits 6, 13; Claimant's Exhibit 1. The death certificate lists the causes of death as cardiopulmonary arrest, malnutrition, "coal worker's pneumoconiosis and chronic obstructive pulmonary disease", and metastatic malignant sarcoma of the left scrotum. Director's Exhibit 6. In his report of June 23, 1994, Dr. Carr stated that the miner died "due to worsening respiratory condition." Director's Exhibit 13. In his report of December 15, 1995, Dr. Carr stated: "The patient's cause of death was metastatic malignant sarcoma of the left scrotum; coalworker's pneumoconiosis and chronic obstructive pulmonary disease is a contributing factor to this patient's death." Claimant's Exhibit 1.

The administrative law judge permissibly found that claimant failed to establish that the miner's death was due to pneumoconiosis because Dr. Carr failed to "offer any explanation of how the coal worker's pneumoconiosis he diagnoses contributed to the miner's death." Decision and Order at 4; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). 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). Consequently, we affirm the administrative law judges finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205.

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

NANCY S. DOLDER
Administrative Appeals Judge