BRB No. 99-0295 BLA

JEAN D. PINSON (Widow of CURTIS PINSON)	)	
Claimant-Petitioner	)	
v.	)	
UTILITY COALS, 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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Jean D. Pinson, Kimper, Kentucky, *pro se*.

Richard Davis (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals, without the aid of counsel, the Decision and Order (97-BLA-1330) of Administrative Law Judge Daniel J. Roketenetz 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).[1] The

[1] Claimant is the surviving widow of the miner, Curtis Pinson, who died on January 12, 1994, Director's Exhibit 10. The miner had filed a living miner's claim which was ultimately denied and is not at issue herein, Director's Exhibit 37. Subsequent to the miner's death, claimant filed a survivor's claim on February 17,

administrative law judge found thirteen years of coal mine employment established, found employer to be the properly designated responsible operator and adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718. The administrative law judge found the evidence of record failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied. Claimant's appeal, at issue herein, followed. Employer responds, urging that the administrative law judge's Decision and Order denying benefits be affirmed. The Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, has not responded to this appeal.

In an appeal filed by a claimant without the aid of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence, *see Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1985). If the findings of fact and conclusions of law of the administrative law judge 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

1994, Director's Exhibit 1. Claimant's appeal was filed on claimant's behalf by Susie Davis of the Kentucky Black Lung Association of Pikeville, Kentucky, but Ms. Davis is not representing claimant on appeal. *See* 20 C.F.R. §§802.211(e), 802.220; *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995).

In order to establish entitlement in this survivor's claim filed after January 1, 1982, in which the miner had not been awarded benefits on a claim filed prior to January 1, 1982, *see* 30 U.S.C. §§901; 932(1), claimant must establish the existence of pneumoconiosis, *see* 20 C.F.R. §718.202; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988), and that the miner's death was due to pneumoconiosis, *see* 20 C.F.R. §§718.1; 718.205(c); *Neeley, supra; cf. Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989), which arose out of coal mine employment, *see* 20 C.F.R. §718.203; *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Moreover, the United States Court of Appeals for the Sixth Circuit, wherein this case arises, has held that, pursuant to Section 718.205(c)(2), pneumoconiosis substantially contributes to death if it hastens the miner's death, *see Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *see also Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).[2]

---

[2] Employer contends that it should be dismissed as the responsible operator in the survivor's claim and that liability should be transferred to the Black Lung Disability Trust Fund (the Trust Fund) because employer contends that it was improperly named the responsible operator in the miner's previously denied claim after the miner's claim had already been presented to an administrative law judge for a decision. We reject employer's contention. Whether or not employer was properly named the responsible operator in the living miner's claim, the survivor's claim is a separate claim, *see* 20 C.F.R. §725.309(c); *The Earl Patton Coal Co. v. Patton*, 848 F.2d 668, 11 BLR 2-97 (6th Cir. 1988); *see also Johnson v. Eastern Associated Coal Corp.*, 8 BLR 1-248 (1985); *but see Kubachka v. Windsor Power House Coal Co.*, 11 BLR 1-171, 1-173 n.1 (1988), and employer was the only named responsible operator in the survivor's claim prior to its referral to the Office of Administrative Law Judges, *see* Director's Exhibits 33-36.

Moreover, pursuant to Section 205(a)(1) of the Black Lung Benefits Amendments of 1981 (the 1981 Amendments), which amended Section 422(c) and (j) of the Black Lung Benefits Reform Act (the Reform Act), liability transfers from the responsible operator to the Trust Fund for the payment of claims in which there was a final denial prior to March 1, 1978, *i.e.*, the effective date of the Reform Act, and which are or have been approved under Section 435 of the Reform Act, 30 U.S.C. §945, *see* 30 U.S.C. §932(j)(3); 26 U.S.C. §9501(d)(1)(B), as implemented by 20 C.F.R. §725.496. Inasmuch as the survivor's claim, at issue herein, was not denied prior to March 1, 1978, it is not subject to the transfer of liability provisions under the

1981 Amendments. In addition, whether the miner's claim was subject to the transfer of liability provisions under the 1981 Amendments prior to his death is misplaced with respect to any potential transfer issue as regards the survivor's claim. Again, any claim filed by the miner would be separate from the subsequent survivor's claim filed by the miner's surviving spouse, which is the only claim at issue before the Board and is not subject to transfer under the 1981 Amendments, *see* 20 C.F.R. §725.496(f). Employer, as the party responsible for payment of survivor's benefits, is not relieved of that responsibility merely because the miner's claim may have been subject to the transfer of liability provisions, *see Johnson v. Eastern Associated Coal Corp.*, 8 BLR 1-248 (1985); *see also Patton v. Earl Patton Coal Co.*, 9 BLR 1-164, *aff'd* 848 F.2d 668, 11 BLR 2-97 (6th Cir. 1988).

Pursuant to Section 718.202(a)(1), the administrative law judge considered the thirty-four readings of the seventeen x-rays of record, Director's Exhibits 13, 18-25, 37; Employer's Exhibits 1-3, and properly found that twenty of the thirty-four readings were read by physicians who were both board-certified radiologists and B-readers.[3] Decision and Order at 8-9. The administrative law judge properly found that fifteen of the twenty readings by physicians who were both board-certified radiologists and B-readers were read as negative, while only four were read as positive. Moreover, the administrative law judge properly found that the majority of the x-ray readings in total were negative. Thus, the administrative law judge permissibly found that the existence of pneumoconiosis was not established under subsection (a)(1) based on the weight and numerical superiority, *see Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990), of the negative x-rays from readers who were both board-certified radiologists and B-readers due to their superior qualifications, *see Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Inasmuch as the administrative law judge considered the qualifications of the physicians and weighed the results of all of the x-ray evidence, his finding is in accord with the holding of the Sixth Circuit court in *Woodward*, *supra*. Consequently, inasmuch as the administrative law judge's finding that the existence of pneumoconiosis was not established under Section 718.202(a)(1) is supported by substantial evidence, it is affirmed.

Next, the administrative law judge also properly found that there was no relevant autopsy or biopsy evidence of record pursuant to Section 718.202(a)(2). Decision and Order at 9. Moreover, as the administrative law judge found pursuant to Section 718.202(a)(3), Decision and Order at 9, the presumptions at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, and at Section 411(c)(5) of the Act, 30 U.S.C. §921(c)(5), as implemented by 20 C.F.R. §718.306, are inapplicable to this survivor's claim filed after January 1, 1982, *see* 20 C.F.R. §§718.202(a)(3), 718.305(a), (e), 20 C.F.R. §718.306(a); Director's Exhibit 1. In addition, the presumption at Section 411(c)(2) of the Act, 30 U.S.C.

[3] A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute of Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

§921(c)(2), as implemented by 20 C.F.R. §718.303, is inapplicable to this survivor's claim filed after January 1, 1982, *see* 20 C.F.R. §§718.303(c); Director's Exhibit 1.

In addition, the administrative law judge noted that Dr. Bassali had found complicated pneumoconiosis on x-rays dated November 30, 1992, Director's Exhibit 19, and January, 1993, Director's Exhibits 23-24. However, as no other physician of record found evidence of complicated pneumoconiosis, including similarly highly qualified physicians who read the same or contemporaneous x-rays, *see Woodward*, *supra*; *Clark*, *supra*; *Trent*, *supra*, the administrative law judge found that complicated pneumoconiosis was not established based on the overwhelming majority of negative x-ray readings for complicated pneumoconiosis, *see Wilt*, *supra*; *Edmiston*, *supra*. Inasmuch as the administrative law judge's finding that complicated pneumoconiosis was not established is supported by substantial evidence, we affirm the administrative law judge's finding that the irrebuttable presumption at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, is inapplicable, *see* 20 C.F.R. §§718.202(a)(3), 718.205(c)(3), 718.304.

Finally, the administrative law judge considered the relevant medical opinion evidence pursuant to Section 718.202(a)(4), Decision and Order at 9-14. The administrative law judge, within his discretion, gave no weight to the opinions of Drs. Varney, Director's Exhibit 37, Roland, Director's Exhibit 37, Mettu, Director's Exhibits 13, 17, and Kraman, Director's Exhibit 14, who all stated that claimant had pneumoconiosis, as their opinions were conclusory and/or undocumented. It is within the administrative law judge's discretion, as the trier-of-fact, to determine the weight and credibility to be accorded the medical experts, *see Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984), and to determine whether an opinion is documented and reasoned, *see Clark*, *supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987)*; Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge also properly gave little weight to the opinions of Drs. Cassady and Sutherland, Director's Exhibit 37, and claimant's hospital records diagnosing respiratory or pulmonary lung disease, as they did not attribute claimant's respiratory or pulmonary lung condition to his coal mine employment and, therefore were insufficient to establish the existence of pneumoconiosis as more broadly defined by the Act and regulations, *see* 30 U.S.C. §902(b); 20 C.F.R. §718.201.

Next, the administrative law judge permissibly found that the opinions of Drs.

Odom and Page, Director's Exhibit 37, who both diagnosed coal workers' pneumoconiosis, were unreasoned, *see Clark*, *supra*; *Fields*, *supra*; *Lucostic*, *supra*, because they provided no other rationale for their diagnoses other than positive x-ray readings which were contrary to the preponderance of the x-ray evidence of record and, in and of themselves, are insufficient to establish the existence of pneumoconiosis under subsection (a)(4), *see Pettrey v. Director, OWCP*, 14 BLR 1-98 (1990)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985). Finally, the administrative law judge, within his discretion, found the remaining opinions of record from Drs. O'Neill, Anderson, Tuteur, Lane, *see* Director's Exhibit 37, and Fino, Employer's Exhibit 4, who all found no evidence of pneumoconiosis, were documented and reasoned, *see Clark*, *supra*; *Fields*, *supra*; *Lucostic*, *supra*, and entitled to greater weight as the administrative law judge found them to be better supported by the objective evidence of record, *see Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Moreover, the administrative law judge, within his discretion, gave greater weight to Dr. Fino's opinion in light of his superior qualifications, *see McMath v. Director, OWCP*, 12 BLR 1-6 (1988).

Thus, as the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), we affirm the administrative law judge's finding that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(4) as supported by substantial evidence. Consequently, inasmuch as claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement, entitlement under Part 718 is precluded, *see Trumbo*, *supra*; *Neeley*, *supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge