

BRB No. 03-0354 BLA

RHUDELL BLEVINS)
(Widow of JAKE BLEVINS))
)
 Claimant-Petitioner)
)
 v.)
)
 CR & R TRUCKING COMPANY) DATE ISSUED: 02/05/2004
 CORPORATION)
)
 and)
)
 LIBERTY MUTUAL INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Rhudell Blevins, Hellier, Kentucky, *pro se*.

Francesca L. Maggard, W. Barry Lewis (Lewis and Lewis Law Office), Hazard, Kentucky, for employer.

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

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order - Denying Benefits (2001-BLA-0646) of Administrative Law Judge Thomas F. Phalen, Jr. rendered 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).¹ The administrative law judge found, and the parties stipulated to, twenty-four years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a) and 718.203(b), but that the evidence was insufficient to establish that pneumoconiosis was a substantially contributing cause of death pursuant to Section 718.205(c). Accordingly, benefits were denied.

On appeal, claimant generally contends that she is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, (the Director) is not participating in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

To establish entitlement to survivor's benefits, 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 pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *see 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). For survivor's claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock*

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001 and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Creek Mining Co., 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

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 and contains no reversible error. In finding that the medical evidence failed to establish death due to pneumoconiosis, the administrative law judge accorded "a lesser degree of probative weight" to the death certificate, signed by deputy coroner Jack L. Salyers, listing the immediate cause of death as myocardial infarction due to cardiorespiratory arrest due to chronic lung disease, as there was no evidence in the record of deputy coroner Salyers's relevant qualifications or his personal knowledge of the miner. This was rational. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *see Willis v. Birchfield Mining Co.*, 15 BLR 1-59 (1991). The administrative law judge also found the autopsy insufficient to establish death due to pneumoconiosis as Dr. George F. Buckley, who diagnosed primary amyloidosis and mild simple pneumoconiosis on autopsy, did not offer an opinion as to cause of death. This was rational. *Farmer v. Matthews*, 584 F.2d 796, 801 (6th Cir. 1978); *Addison*, 11 BLR 1-68. Instead, the administrative law judge accorded Dr. Gregory J. Fino's opinion, that the miner's death was due to amyloidosis unrelated to pneumoconiosis, probative weight because he found it better documented and reasoned, and because of Dr. Fino's superior qualifications. This was rational. *See Bill Branch Coal Co. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Clark*, 12 BLR 1-149; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields*, 10 BLR 1-19. We, therefore, affirm the administrative law judge's finding that the evidence of record failed to establish death due to pneumoconiosis. *See Griffith*, 49 F.3d 184, 19 BLR 2-111; *Brown*, 996 F.2d 812, 17 BLR 2-135; *Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

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*, 12 BLR 1-149; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis. *See Griffith*, 49 F.3d 184, 19 BLR 2-111; *Brown*, 996 F.2d 812, 17 BLR 2-135; *Trumbo*, 17 BLR 1-85; *see also Director, OWCP v. Greenwich Collieries*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994); *aff'g sub nom. Greenwich Collieries v. Director, OWCP [Ondecko]*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

Accordingly, the administrative law judge's Decision and Order - Denying Benefits in this survivor's claim is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge