

BRB No. 02-0136 BLA

RUBY DOTSON HURLEY)	
(Divorced Spouse of GLEN J. DOTSON))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
ROBERT COAL COMPANY)	
)	
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 F. Solomon, Administrative Law Judge, United States Department of Labor.

Ruby Dotson Hurley, Honaker, Virginia, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (2001-BLA-0569) of Administrative Law Judge Daniel F. Solomon 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).¹ Based on the date of filing, the

¹The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective

administrative law judge adjudicated this claim pursuant to 20 C.F.R Part 718.² On the merits, the administrative law judge found the evidence of record insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), or that claimant was entitled to the irrebuttable presumption of death due to pneumoconiosis pursuant to 20 C.F.R. §718.304. 30 U.S.C. §921 (c)(3). Accordingly, benefits were denied.

On appeal, claimant generally contends that she is entitled to benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate 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 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 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).

on January 19, 2001, and are found at 20 C.F.R. Parts 718, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

²Claimant is Ruby Dotson Hurley, the surviving divorced spouse of the miner, Glen J. Dotson, who died on November 23, 1994. Director's Exhibit 3. Claimant filed the instant survivor's claim on May 23, 2000, which was denied by the district director on December 6, 2000, due to claimant's failure to establish any required element of entitlement. Director's Exhibits 1, 16. The record also indicates that the miner filed an application for benefits on January 25, 1977, which was denied by the district director on June 26, 1979, due to the miner's failure to establish any requisite element of entitlement. Director's Exhibit 19. Only the survivor's claim is at issue herein. Director's Exhibit 21.

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment, that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that death was caused by complications of pneumoconiosis.³ See 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Griffith [Myrtle] v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1994); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Pneumoconiosis is a “substantially contributing cause” of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Griffith, supra*.

After consideration of the administrative law judge's Decision and Order Denying Benefits 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 therein. Relevant to a determination pursuant to Section 718.205(c), the record contains the opinions of examining physicians, Drs. Anderson, O'Neill, Page, Ballard Wright, and Terry Wright, all of whom diagnosed the presence of simple pneumoconiosis, and the 1979 opinion of Dr. Harris, who failed to diagnose the presence of pneumoconiosis. Director's Exhibit 19. Numerous medical records of the miner's treatment at Pikeville United Methodist Hospital, and Methodist Hospital of Kentucky are also contained in the record, and several of these records note the miner's history of silicosis and chronic obstructive lung disease as well as other non-respiratory conditions. Director's Exhibit 8. The administrative law judge considered this evidence, and rationally accorded it little weight as it did not address the cause of the miner's death and therefore cannot support claimant's burden of proof on this issue. Decision and Order at 5; see *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994).

³Since the miner's last coal mine employment took place in Kentucky, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. Director's Exhibit 12; see *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

The administrative law judge also considered the miner's death certificate, the only medical evidence of record which addresses the cause of the miner's death. This document indicates that the miner's death was due to massive internal injuries sustained during an automobile accident which occurred when the miner drove off the road into a creek. Director's Exhibit 3. The administrative law judge rationally credited the death certificate, which is supported by claimant's hearing testimony,⁴ and determined that claimant failed to prove that pneumoconiosis contributed to, or hastened the miner's death. Hearing Transcript at 42; Decision and Order at 5-6; *Ondecko, supra*; *Griffith, supra*; *Trumbo, supra*. As this finding is supported by substantial evidence, it is affirmed. 20 C.F.R. §718.205(c).

Pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by Section 718.304, the administrative law judge also considered whether claimant was entitled to the irrebuttable presumption of death due to pneumoconiosis, by considering whether the record evidence established the existence of complicated pneumoconiosis. The administrative law judge considered the aforementioned medical evidence in addition to the x-ray evidence of record which includes four x-ray interpretations which were positive for the existence of simple pneumoconiosis, and ten x-ray readings which found no evidence of the disease. Director's Exhibits 8, 19. As the record contains no evidence that the miner suffered from complicated pneumoconiosis, the administrative law judge rationally found that claimant was not entitled to the irrebuttable presumption. Decision and Order at 5; *Ondecko, supra*; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); 20 C.F.R. §718.304. As this finding is supported by substantial evidence, it is affirmed.

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)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Inasmuch as the record contains no other evidence which supports a finding that the miner's death was due to pneumoconiosis, or that the miner suffered from complicated pneumoconiosis, 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), or entitlement to the irrebuttable presumption of death due to pneumoconiosis pursuant to Section 718.304. We further affirm the denial of survivor's benefits.⁵ *Griffith*,

⁴Claimant initially testified that the miner died of "black lung", but later agreed that the miner died as a result of a car accident. Hearing Transcript at 17, 42.

⁵Inasmuch as we hold that substantial evidence supports the administrative law judge's denial of benefits, we need not address employer's objections regarding the administrative law judge's finding that the parties stipulated to the existence of

supra; Trumbo, supra.

pneumoconiosis pursuant to 20 C.F.R. §718.202. Employer's response Brief at 3 n. 4; Decision and Order at 3.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge