

BRB No. 01-0780 BLA

MARTHA MARIE CHANEY)
(Widow of WILLIAM LEE CHANEY))
Claimant-Petitioner)

v.)

PEABODY COAL COMPANY)

DATE ISSUED:

and)

OLD REPUBLIC 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 Donald W. Mosser,
Administrative Law Judge, United States Department of Labor.

Martha Marie Chaney, Greenville, Kentucky, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant, the widow of the miner, appeals, without the assistance of counsel, the Decision and Order - Denying Benefits (01-BLA-325) of Administrative Law Judge Donald W. Mosser 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 Based on the date of filing, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718.² Considering the evidence submitted in support of the claim, the administrative law judge again concluded that it failed to establish that the miner's death was caused by or in any way hastened by pneumoconiosis. He, therefore, found that the evidence failed to demonstrate that a mistake in a determination of fact had been made in the prior denial of survivor's benefits. Accordingly, benefits were denied.

On appeal, claimant generally contends that she is entitled to benefits. The employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, 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. *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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, claimant must establish that the miner

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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² The miner filed a claim for benefits on August 23, 1973, which was denied by the administrative law judge on October 4, 1983. That denial was affirmed by the Board on August 20, 1986. Director's Exhibit 25. The miner did not further pursue his claim. The miner died on March 17, 1990. Director's Exhibit 8. Claimant filed a survivor's claim for benefits on August 21, 1997, which was denied by the district director on June 30, 1998. Director's Exhibits 1, 23, 24. Claimant requested a hearing and after the administrative law judge's Decision and Order denying benefits on July 24, 2000, filed a request for modification on September 27, 2000. Director's Exhibits 51-54. A hearing was held pursuant to that modification request on April 4, 2001, which resulted in the Decision and Order - Denying Benefits now before us on appeal.

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)-(3). 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, 186 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

After considering 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. As the miner is deceased and thus cannot establish a change in condition on modification based on additional evidence, the administrative law judge reviewed the previously submitted medical evidence and properly determined that his prior decision did not contain a mistake in a determination of fact. Specifically, the administrative law judge reiterated his previous finding that the opinions of Drs. Naeye, Hansbarger, Caffrey and Wright, who all found that death did not contribute to death, were entitled to greater weight. Decision and Order at 4. Thus, the administrative law judge rationally found that the evidence was insufficient to establish death due to pneumoconiosis, and thus, insufficient to establish a mistake in a determination of fact. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *see Griffith, supra*; *Worrell, supra*; Director=s Exhibits 8, 10, 12, 22, 27.

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 judge=s finding that the evidence of record is insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c), and his denial of claimant=s request for modification.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge