

BRB No. 07-0665 BLA

S.A.P. )  
(Widow of L.W.P.) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 )  
U.S. STEEL MINING COMPANY, LLC ) DATE ISSUED: 04/30/2008  
 )  
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 Denying Benefits of Richard A. Morgan,  
Administrative Law Judge, United States Department of Labor.

S.A.P., Racine, West Virginia, *pro se*.

Howard G. Salisbury, Jr. (Kay Casto & Chaney PLLC), Charleston, West  
Virginia, for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2004-BLA-5830) of Administrative Law Judge Richard A. Morgan rendered 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).<sup>1</sup>

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<sup>1</sup> Claimant, S.A.P., is the widow of the deceased miner, L.W.P. The miner died on February 14, 2002; claimant filed for survivor's benefits on August 14, 2002. Director's Exhibit 2.

The administrative law judge credited the miner with at least twelve years of qualifying coal mine employment and, based on the date of filing, adjudicated this survivor's claim pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the evidence of record established the existence of pneumoconiosis, and that the pneumoconiosis arose out of the miner's coal mine employment, 20 C.F.R. §§718.202(a)(2), 718.203(b), but was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant generally challenges the denial of benefits, the finding on length of coal mine employment,<sup>2</sup> and the administrative law judge's evaluation of the evidence. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response 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 Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 in to the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 718.304; *see 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).

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<sup>2</sup> Claimant asserts that the miner had 17 years of qualifying coal mine employment, and contests the administrative law judge's finding that the parties stipulated to at least 12 years of coal mine employment. *See* Decision and Order at 3; Hearing Transcript at 11-12. However, the administrative law judge properly accorded claimant the presumption that the miner's pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(b), and claimant would get no further benefit from establishing any additional years of coal mine employment. Consequently, we decline to further consider this issue.

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); *see also Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).<sup>3</sup>

In this case, the only medical evidence of record is the miner’s death certificate, and the autopsy report.<sup>4</sup> The administrative law judge found that the autopsy report established the existence of pneumoconiosis at Section 718.202(a)(2), and that the pneumoconiosis arose out of coal mine employment pursuant to Section 718.203(b).<sup>5</sup> However, he determined that claimant failed to establish that the miner’s death was due to pneumoconiosis under Section 718.205(c). Decision and Order at 6, 7.

In evaluating the evidence under Section 718.205(c), the administrative law judge properly concluded that subsection (c)(3) is not applicable in this case, because there is no evidence of complicated pneumoconiosis that would establish invocation of the irrebuttable presumption of death due to pneumoconiosis at 20 C.F.R. §718.304. As the autopsy report fails to indicate the presence of “massive lesions” in the lungs, and the record contains no x-ray evidence, nor any other proof that would yield the same result under Section 718.304(a)-(c), this finding is affirmed. *See generally Eastern Associated Coal Corp. v. Director, OWCP*, 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 22 BLR 2-554 (4th Cir. 1999).

Next, the administrative law judge addressed whether the miner’s death was caused by pneumoconiosis, whether pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death, or whether the miner’s death was caused by complications of pneumoconiosis, under Section 718.205(c)(1) and (c)(2). He determined that “neither the death certificate nor the autopsy report indicate [sic] in any

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<sup>3</sup> The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as the miner was last employed in the coal mine industry in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

<sup>4</sup> The death certificate lists the immediate cause of death as “Cardiorespiratory arrest,” due to (or as a consequence of) “massive myocardial infarction,” and “hypertension.” Director’s Exhibit 11.

On autopsy, Dr. Estalilla’s five anatomic diagnoses include “simple coal worker’s [sic] pneumoconiosis.” Director’s Exhibit 12 at 1.

<sup>5</sup> These findings are not challenged on appeal and are, therefore, affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711-712 (1983).

way that pneumoconiosis played a role in the miner's death."<sup>6</sup> Decision and Order at 7. Observing that the death certificate did not cite pneumoconiosis "in any fashion," he noted that although "the autopsy report states that the miner had the disease, it describes other processes in explaining the cause of death," and "does not indicate that pneumoconiosis was involved in any of those processes." *Id.*; Director's Exhibit 12. Accordingly, he concluded that there is no evidence to establish that the miner's death was caused by pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to his death, or that his death was caused by complications of pneumoconiosis, under Section 718.205(c)(1) or (c)(2).

After review of the administrative law judge's findings and conclusions respecting the evidence of record, we conclude that the Decision and Order is supported by substantial evidence, consistent with applicable law, and must be affirmed. In finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), the administrative law judge accurately reviewed the medical evidence, and rationally found that it failed to indicate any connection between the miner's pneumoconiosis and his death, or to establish any involvement in the process of death. The record contains no conflicting evidence; in this connection, we note that claimant has failed to submit any medical evidence on the miner's health in support of her general assertion that "Black Lung will contribute to a massive heart attack and plays a key role in it." Claimant's Brief. The United States Court of Appeals for the Fourth Circuit has stressed that in order for a claimant to establish that the miner's death was due to pneumoconiosis under Section 718.205(c), the evidence must explain the connection between the miner's pneumoconiosis and his death; specifically, the evidence must provide a "causal connection." *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 187, 193, 22 BLR 2-253, 2-263 (4th Cir. 2000). No such connection has been established in this case.

Consequently, we affirm the administrative law judge's determination that the evidence of record fails to establish that the miner's death was due to pneumoconiosis. Because claimant has failed to establish this essential element of entitlement, we affirm the administrative law judge's denial of survivor's benefits. 20 C.F.R. §718.205(c); *see Shuff*, 967 F.2d 977, 16 BLR 2-90; *Neeley*, 11 BLR 1-85.

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<sup>6</sup> We reject as inaccurate claimant's assertion that the "autopsy report states that [the miner] had 70% of Black Lung;" the notation "70% occlusion" was listed in connection with the coronary diagnoses. Claimant's Brief at 1; Director's Exhibit 12 at 1.

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge