

BRB No. 98-1579 BLA

DOROTHY BAILEY)
(Divorced Widow of ROBERT BAILEY))
)
 Claimant-Petitioner))
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Dorothy Bailey, Elizabeth, Elizabeth, New Jersey, *pro se*.

Robert J. Cox (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before:

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order

¹Claimant, Lucille Metheny, is the widow of the miner, Wesley J. Metheny, Jr., who died on July 13, 1994. The death certificate lists the miner's cause of death as metastatic pancreatic cancer. No other conditions were listed. Director's Exhibit 9. The miner filed a claim for benefits on July 8, 1988, Director's Exhibit 29. Subsequently, the miner informed Administrative Law Judge Robert L. Cox, that he wished to withdraw his claim, and on April 4, 1990, Judge Cox issued an Order of Dismissal. Director's Exhibit 29. No further action was taken until the filing of this survivor's claim. Further, we hereby acknowledge receipt of claimant's letter dated August 26, 1998 along with the material submitted with the letter.

(96-BLA-0161) of Administrative Law Judge Thomas F. Phalen, Jr. 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).² The administrative law judge found that the record supports the parties' stipulation of forty-one years of coal mine employment. Decision and Order at 3. The administrative law judge further found that the evidence of record failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), Decision and Order at 6-8, and that even if the presence of the disease was established, no evidence of record supported a finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205, Decision and Order at 8-9. Accordingly, benefits were denied. Employer, in response to claimant's appeal, urges the Board to affirm the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has not filed a brief.³

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-361 (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.

²Claimant was not represented by counsel below. Inasmuch as claimant was informed of her right to counsel without charge, was afforded the opportunity to testify on her own behalf, and was afforded the opportunity to review evidence proffered by employer, *see* Letter of January 21, 1997; Hearing Transcript at 6-27, we hold that the requirements established in *Shapell v. Director, OWCP*, 7 BLR 1-304 (1984), regarding *pro se* representation before an administrative law judge, have been satisfied.

³We affirm the administrative law judge's length of coal mine employment determination as it is not adverse to claimant and unchallenged on appeal by the other parties. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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).

In order to establish entitlement on a survivor’s claim filed pursuant to Section 718.205(c), a claimant must establish that the miner’s death was due to pneumoconiosis or that the disease was a substantially contributing cause or factor leading to the miner’s death. 20 C.F.R. §718.205(c); see *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); see also *Northern Coal Co. v. Director, OWCP [Pickup]*, 100 F.3d 871, 20 BLR 2-335 (10th Cir. 1996); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989). A claimant may establish that pneumoconiosis was a substantially contributing cause to the miner’s death by demonstrating that the disease hastened the miner’s death. See *Brown, supra*. In finding that claimant failed to establish that the miner’s death was due to pneumoconiosis pursuant to Section 718.205, the administrative law judge found that only one document of record identified the miner’s cause of death, the death certificate signed by Dr. Hay. Director’s Exhibit 9. Dr. Hay opined that the miner’s death was due to metastatic pancreatic cancer, and made no mention of pneumoconiosis or any coal dust related disease. Director’s Exhibit 9. Accordingly, the administrative law judge properly concluded that the death certificate failed to support a finding that the miner’s death was due to pneumoconiosis, and properly determined that, in the absence of any further documentation identifying the miner’s cause of death, claimant was unable to carry her burden of establishing that the miner’s death was due to pneumoconiosis. 20 C.F.R. §718.205(c); see *Brown*; see also *Pickup, supra*; *Shuff, supra*; *Lukosevicz, supra*. Inasmuch as claimant has failed to establish that the miner’s death was due to pneumoconiosis, the denial of benefits must be affirmed.⁴

⁴We therefore need not address the administrative law judge’s determination that claimant failed to address the existence of pneumoconiosis pursuant to Section 718.202(a), as the finding is moot. See 20 C.F.R. §718.205(c); see generally *Coen v. Director, OWCP*, 7 BLR 1-30 (1984).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge