

BRB No. 97-1212 BLA

DOROTHY McCLANAHAN)
(Widow of ELMER E.)
McCLANAHAN))
)
Claimant-Petitioner))
)
v.)
)
KENTLAND ELKHORN COAL) DATE ISSUED: _____
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 Denying Benefits of Robert G. Mahony,
Administrative Law Judge, United States Department of Labor.

Dorothy McClanahan, Grundy, Virginia, *pro se*.

Lois A. Kitts (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for
employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals, without the assistance of counsel, the Decision and Order

¹Claimant is the miner's widow. The miner's death certificate, completed by Dr. Sutherland, indicates that the miner died on December 25, 1994, and lists acute coronary thrombosis as the immediate cause of death. Director's Exhibit 67. "COPD 34 years coal mines" is next listed as a condition leading to the immediate

Denying Benefits (96-BLA-1096) of Administrative Law Judge Robert G. Mahony in the deceased miner's claim and in the 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). The miner's claim is before the Board for the second time. Most recently, the Board affirmed the denial of benefits in the miner's claim based on the miner's failure to establish total disability under 20 C.F.R. §718.204(c). *McClanahan v. Kentland Elkhorn Coal Co.*, BRB No. 92-2652 BLA (Nov. 24, 1993)(unpub.). Director's Exhibit 46. The miner subsequently requested modification and submitted new evidence. The miner thereafter died, and claimant filed a claim for survivor's benefits. Following the district director's denial of modification in the miner's claim, and denial of benefits in the survivor's claim, claimant requested a hearing. A hearing was held before Administrative Law Judge Robert G. Mahony (hereinafter, the administrative law judge), who issued a decision on the record.

Considering the issue of modification under 20 C.F.R. §725.310, the administrative law judge found that the newly submitted evidence, considered in conjunction with the weight of the previously considered evidence, fails to establish that the miner was totally disabled. The administrative law judge thus found no change in conditions, and also found no mistake in a determination of fact. Considering claimant's burden to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) in the survivor's claim, the administrative law judge found that the record as a whole fails to establish that death was caused by pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. Accordingly, the administrative law judge denied the deceased miner's request for modification and the survivor's claim.

Employer responds to claimant's *pro se* appeal, and urges affirmance of the decision below. The Director, Office of Workers' Compensation Programs, has not filed a brief in the 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. *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 into the Act by 30

cause of death. *Id.*

U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

We first address the administrative law judge’s denial of modification and benefits in the deceased miner’s claim. The administrative law judge noted that the deceased miner’s claim was previously denied because the record evidence failed to establish total disability, and found that the newly submitted evidence in no way alters this finding, Decision and Order at 5. The administrative law judge determined that the evidence submitted on modification, considered in conjunction with the evidence previously considered by the district director, does not establish a change in conditions or a mistake in a determination of fact so as to warrant modification of the prior denial. We affirm the administrative law judge’s finding on modification at Section 725.310 as it is supported by substantial evidence and in accordance with law. Specifically, the Board previously affirmed the finding that the record evidence fails to establish total disability under Section 718.204(c)(1) - (3) and no evidence relevant to these subsections was submitted on modification. Further, the administrative law judge properly found that Drs. Michos and Branscomb, whose opinions were submitted on modification, “concurred in finding that [the deceased miner] was not disabled due to pneumoconiosis. There is no medical evidence to suggest otherwise.” Decision and Order at 5; Director’s Exhibit 70, Employer’s Exhibit 2.² The administrative law judge thus indicated, within his discretion, that he found that the medical opinion evidence is insufficient to support a change in conditions or a mistake in a determination of fact. We hold that the administrative law judge’s denial of modification is consistent with the decision of the United States Court of Appeals for the Sixth Circuit in *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994).

We next address the administrative law judge’s denial of survivor’s benefits. In order to establish entitlement to benefits in a survivor’s claim filed after January 1, 1982, claimant must establish that the miner’s death was due to pneumoconiosis. See 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c); *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). Under 20 C.F.R. §718.205(c), death will be considered due to pneumoconiosis if pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death. The United States Court of Appeals for the Sixth Circuit, wherein jurisdiction of this case lies, held in *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993), that

²The record supports the administrative law judge’s finding that the clinical notes found at Director’s Exhibit 68, which were submitted on modification, are illegible.

pneumoconiosis will be found to be a substantially contributing cause or factor leading to the miner's death if it serves to hasten that death in any way, *Brown, supra*, 996 F.2d 812 at 817, 17 BLR 2-135 at 2-141; see also *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).

We affirm the administrative law judge's denial of survivor's benefits in the instant case. The evidence relevant to the cause of the miner's death consists of the death certificate, see n.1, and the reports of Drs. Michos³ and Branscomb⁴ who found, based on a review of the medical record, that the miner's death was due to cardiac conditions unrelated to coal workers' pneumoconiosis or coal mine employment. The administrative law judge properly credited the opinions of Drs. Michos and Branscomb as reasoned and documented, *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); see also *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987), and rendered by pulmonary specialists, *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985), in finding that the miner's death was cardiac in nature and was a result of acute coronary thrombosis. The administrative law judge weighed all of the relevant medical evidence and found that the listing of "COPD 34 years coal mines" as a causative factor on the death certificate, is insufficient to establish pneumoconiosis as a substantially contributing cause of the miner's death. In this regard, the administrative law judge properly found that both physicians who had the opportunity to review the entire medical record, concurred in finding that coal workers' pneumoconiosis was not a factor in the miner's death. See Director's Exhibit 70, Employer's Exhibit 2. Because the relevant evidence, as weighed by the

³Dr. Michos found the absence of coal workers' pneumoconiosis, evidence of progressive cardiomegaly, and no significant pulmonary impairment. He found that the cause of death "appears to have been cardiac in origin as seen by his death certificate which lists acute coronary thrombosis as the immediate cause of death and does not appear to be related to any respiratory or prior [coal mine employment.]" Director's Exhibit 70.

⁴Dr. Branscomb found no coal workers' pneumoconiosis and no related impairment, and also found that death was in no way related to pneumoconiosis or any dust-related condition. Dr. Branscomb opined that the miner died as a result of long standing uncontrolled cardiac disease with severe arrhythmias, myocardial infarction, and impaired left ventricular function, and that these "conditions were not caused nor was his death hastened by coal dust exposure nor by [coal workers' pneumoconiosis.]" Employer's Exhibit 2. Dr. Branscomb indicated that, assuming that the miner had pneumoconiosis, he would still conclude that such coal workers' pneumoconiosis had no effect on the cardiac conditions from which the miner suffered and ultimately died. *Id.*

administrative law judge, fails to meet claimant's burden to establish death due to pneumoconiosis pursuant to *Brown* and *Griffith*, we affirm the administrative law judge's finding at Section 718.205(c) as it is supported by substantial evidence and in accordance with law.

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

REGINA C. McGRANERY
Administrative Appeals Judge