

BRB No. 98-0227 BLA

CHARLOTTE R. GIBSON)	
(Widow of CURTIS GIBSON))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Charlotte R. Gibson, Dayton, Ohio, *pro se*.

Cathryn Celeste Helm (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: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-203) of Administrative Law Judge Robert L. Hillyard 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). The administrative law judge found six months of coal mine employment and the existence of pneumoconiosis established and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.¹ Decision and Order at 4. The administrative law judge concluded that the evidence of record was insufficient to establish

¹ The miner died July 21, 1995. Director's Exhibit 13. Claimant filed her claim for survivor's benefits on September 5, 1995. Director's Exhibit 1.

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 contends that she is entitled to benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 on a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the miner's death was due to , or substantially contributed to, pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205, 718.201; *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *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); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The administrative law judge, in the instant case, properly determined that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). The death certificate lists the immediate cause of death as myocardial infarction with chronic renal failure and hypertension as other significant conditions. Director's Exhibit 13. A death summary from the hospital where the miner died lists a final diagnosis of probable myocardial infarction, chronic renal failure, coronary artery disease, hypertension and post abdominal aortic aneurysm surgery. Director's Exhibit 15. The administrative law judge properly found this evidence was insufficient to establish death due to pneumoconiosis as pneumoconiosis was not shown to be the cause or a contributing factor in the miner's death, and there was no other medical evidence to support a finding of death due to pneumoconiosis. *Griffith, supra*; *Brown, supra*. Consequently, we affirm the administrative law judge's denial in this survivor's claim as it is supported by substantial evidence and is in accordance with law. *Griffith, supra*; *Brown, supra*.

Inasmuch as claimant has failed to establish that the miner's death was due to

pneumoconiosis, a requisite element of entitlement in a survivor's claim pursuant to Part 718, entitlement thereunder is precluded. *Brown, supra.*

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge