

BRB No. 99-1269 BLA

MABEL MERRITT)
(Widow of ROBERT HENRY MERRITT))
)
 Claimant-Petitioner))
)
 v.) DATE ISSUED:
)
)
 BETH ENERGY MINES,)
 INCORPORATED)
)
 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 of Daniel J. Roketenetz,
Administrative Law Judge, United States Department of Labor.

Mabel Merritt, Elkhorn City, Kentucky, *pro se*.

Natalie D. Brown (Jackson & Kelly PLLC), Lexington, Kentucky, for
employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and
NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant,¹ representing herself, appeals the Decision and Order (98-BLA-0723) of Administrative Law Judge Daniel J. Roketenetz denying benefits on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine

¹Claimant is the surviving spouse of the deceased miner who died on March 5, 1996. Director's Exhibit 6.

Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The instant case involves a survivor's claim filed on February 4, 1997.² The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue 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 findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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).

²The miner filed a claim for benefits on July 12, 1979. Director's Exhibit 26. In a Decision and Order dated August 15, 1983, Administrative Law Judge John C. Holmes denied benefits. *Id.* Judge Holmes denied the miner's motion for reconsideration on September 9, 1983. *Id.* By Decision and Order dated June 16, 1986, the Board affirmed Judge Holmes's denial of benefits. *Merritt v. Bethlehem Steel Corp.*, BRB No. 83-2228 BLA (June 16, 1986) (unpublished); Director's Exhibit 26. There is no indication that the miner took any further action in regard to his 1979 claim.

Inasmuch as the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).³ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The case at bar arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit which has held that pneumoconiosis will be considered a substantially contributing cause of the miner's death if it actually hastened the miner's death. *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

³Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.

20 C.F.R. §718.205(c).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718. The administrative law judge properly found that the miner's death certificate⁴ was insufficient to support a finding of death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Decision and Order at 9. The administrative law judge also properly noted that none of the hospital records or reports indicate that pneumoconiosis caused or hastened the miner's death in any way. *Id.* Finally, the administrative law judge correctly stated that Drs. Jarboe, Branscomb and Dahhan opined that pneumoconiosis neither caused nor hastened the miner's death.⁵ *Id.*; Employer's Exhibits 1, 2, 4-6. Consequently, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁶

In light of our affirmance of the administrative law judge's finding that the

⁴Dr. Page completed the miner's death certificate. Dr. Page attributed the miner's death to cardiac arrest due to coronary artery disease with arrhythmia. Director's Exhibit 6. Dr. Page listed chronic obstructive pulmonary disease and peripheral vascular disease as other significant conditions that contributed to the miner's death. *Id.* Dr. Page did not indicate, however, that the miner's chronic obstructive pulmonary disease was attributable to his coal dust exposure. *Id.*

⁵In a report dated September 21, 1998, Dr. Jarboe opined that coal workers' pneumoconiosis did not cause, contribute to, or in any way hasten the miner's death. Employer's Exhibit 1.

In a report dated September 15, 1998, Dr. Branscomb opined that coal workers' pneumoconiosis did not contribute to or hasten the miner's death. Employer's Exhibit 2. Dr. Branscomb reiterated his opinion during an October 19, 1998 deposition. Employer's Exhibit 6.

In a report dated September 8, 1998, Dr. Dahhan opined that there was no evidence that the miner's death was caused by, contributed to, or aggravated by his coal dust exposure or coal workers' pneumoconiosis. Employer's Exhibit 4. Dr. Dahhan reiterated his opinion during an October 12, 1998 deposition. Employer's Exhibit 5.

⁶Because there is no evidence of complicated pneumoconiosis in the record, claimant is precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. See 20 C.F.R. §718.205(c)(3).

evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), we need not address the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1)-(4). See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge