

BRB No. 08-0144 BLA

L.C.)	
(Widow of B.C.))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS’)	DATE ISSUED: 08/28/2008
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

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

L.C., Jenkins, Kentucky, *pro se*.

Sarah M. Hurley (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order – Denial of Benefits (2007-BLA-5108) of Administrative Law Judge Ralph A. Romano rendered on a request for modification of the denial of a survivor’s claim¹ 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 determined that

¹ The miner died on October 30, 2001. Director’s Exhibit 11. Claimant, the miner’s widow, filed her claim for survivor’s benefits on December 18, 2001. Director’s Exhibit 4.

the survivor's claim was previously denied on December 1, 2004, by Administrative Law Judge Rudolf L. Jansen, for failure to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), and that the denial of benefits was upheld by the Board on appeal. Decision and Order at 2; *[L.C.] v. Director, OWCP*, BRB No. 05-0283 BLA (Aug. 5, 2005)(unpub.). On September 13, 2005 and November 29, 2005, the Board denied claimant's Motions for Reconsideration and reaffirmed its Decision and Order dated August 5, 2005. Following claimant's request for modification on April 25, 2006, the administrative law judge found² that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis at Section 718.205(c). Accordingly, modification was denied pursuant to 20 C.F.R. §725.310.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a response urging affirmance of the denial of claimant's modification request and the denial of benefits.

In an appeal by a claimant proceeding 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). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hichman & 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).

² A decision was made on the record, because claimant indicated she was unable to attend a hearing.

³ The law of the United States Court of Appeals for the Sixth Circuit is applicable, as the miner was employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 3.

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 Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-116 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993).

The sole ground for modification in a survivor’s claim is that a mistake in a determination of fact was made. *Wojtowicz v. Duquesne Light Company*, 12 BLR 1-162, 1-164 (1989). The modification procedure allows for the review of factual errors in an effort to render justice under the Act by vesting the fact-finder “with broad discretion to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted.” *O’Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992).

After consideration of the administrative law judge’s Decision and Order, and the evidence of record, we conclude that the administrative law judge’s Decision and Order is supported by substantial evidence, consistent with applicable law, and must be affirmed. In finding that Judge Jansen had properly denied survivor’s benefits, the administrative law judge accurately determined that the only evidence in the record before Judge Jansen relevant to the cause of the miner’s death was the death certificate, which listed the immediate cause of death as sudden myocardial infarction and did not mention any coal mine dust related cause. Decision and Order at 3; Director’s Exhibit 11. Furthermore, as the evidence submitted in support of modification had been previously considered in the prior decision and did not address the cause of the miner’s death, the administrative law judge properly concluded that claimant failed to establish death due to pneumoconiosis pursuant to Section 718.205(c), and that modification of the prior denial was not appropriate. Decision and Order at 3; *see O’Keeffe*, 404 U.S. at 257; *Wojtowicz*, 12 BLR at 1-164. The administrative law judge’s findings pursuant to Section 725.310 are supported by substantial evidence and are affirmed. Consequently, we affirm the administrative law judge’s denial of survivor’s benefits.

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge