

BRB No. 98-1572 BLA

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| EDITH M. DOTSON |) | |
| (Widow of DEXTER DOTSON) |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| DEENA COAL COMPANY, |) | DATE ISSUED: |
| INCORPORATED |) | |
| |) | |
| Employer |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Respondent |) | DECISION and ORDER |

Appeal of the Decision and Order of Edward J. Murty, Jr., Administrative Law Judge, United States Department of Labor.

Edith M. Dotson, Pound, Virginia, *pro se*.

Russell V. Presley, II, (Street, Street, Street, Scott & Bowman), Grundy, Virginia, for employer.

Helen H. 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: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (97-BLA-1610) of Administrative Law Judge Edward J. Murty, Jr., denying benefits in this 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 at least twelve years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and insufficient to establish death 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, 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 are 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).

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 pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205, 718.201; *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). Moreover, the United States Court of Appeals for the Fourth Circuit, within whose appellate jurisdiction this case arises, held in *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1993), that any condition that actually hastens the miner's death is a substantially contributing cause of death for purposes of Section 718.205(c).

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 administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. The administrative law judge, in the instant case, permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). The administrative law judge rationally found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a) as all of the x-rays of record were read negative for pneumoconiosis. 20 C.F.R. §718.202(a)(1). In addition, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to Section

718.202(a)(2) and (3) as there was no evidence of pneumoconiosis,¹ this is a living miner's claim filed after January 1, 1982, and there is no evidence of complicated pneumoconiosis in the record. 20 C.F.R. §§718.304, 718.305, 718.306; Decision and Order at 2; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986). Further, the administrative law judge considered the entirety of the medical opinion evidence of record and permissibly found that Dr. Paranthaman's opinion that claimant's chronic bronchitis was due to the combined effect of cigarette smoking and coal dust exposure was outweighed by the contrary opinions of Drs. Hansbarger and Fino that the miner did not have pneumoconiosis, and that Dr. Paranthaman had subsequently disavowed his finding. Decision and Order at 3. See *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Puleo v. Florence Mining Co.*, 8 BLR 1-198 (1984); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985). We therefore affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(4) as it is supported by the substantial evidence and is in accordance with law.

With respect to 20 C.F.R. §718.205(c), the administrative law judge properly determined that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis. The administrative law judge found that the death certificate signed by Dr. Prince, the miner's treating physician lists the immediate cause of death as cardiopulmonary arrest due to or as a consequence of massive hemoptysis due to or as a consequence of lung cancer, that Dr. Hansbarger, a board certified pathologist, found no pneumoconiosis and that death was not connected in any way to his coal mine employment, and that Dr. Fino who reviewed the entire file found death was not caused, contributed to or hastened by pneumoconiosis. Decision and Order at 2. Thus, the administrative law judge rationally concluded that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis as none of the evidence connected the miner's death to pneumoconiosis. Decision and Order at 3. 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. *Shuff, supra; Trumbo, supra.*

Inasmuch as claimant has failed to establish the existence of pneumoconiosis or that the miner's death was due to pneumoconiosis, entitlement to benefits in this survivor's claim is precluded. *Trumbo, supra.*

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

¹ The administrative law judge noted that biopsy findings disclosed cancer in the lung. Decision and Order at 2.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge