

BRB No. 98-1586 BLA

THELMA R. DURHAM)	
(Widow of GEORGE DURHAM))	
)	
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 Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Thelma R. Durham, Big Stone Gap, *pro se*.

Sarah M. Hurley (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, McGRANERY, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order Denying Benefits (97-BLA-1072) of Administrative Law Judge Pamela Lakes Wood on a 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 died on November 7, 1994, Director's Exhibit 6, and, in August 1996, claimant filed a survivor's claim. The administrative law judge, at the request of claimant, did not take testimony from claimant at the hearing in this case. The administrative law judge found that 6.25 years of coal mine

¹ Ron Carson, a benefits counselor with Stone Mountain Health Services in St. Charles, Virginia, on behalf of claimant, requested an appeal of the administrative law judge's Decision and Order Denying Benefits, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

employment was established. The administrative law judge further found that the medical opinion evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203.² However, the administrative law judge found that claimant failed to establish that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c); see *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993). Accordingly, benefits were denied. Claimant appeals, contending generally that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs, has submitted a response supporting affirmance of the administrative law judge's 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. *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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits in a claim filed 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 had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction the instant case arises, has held that pneumoconiosis should be considered a substantially contributing cause of death if it actually hastened the miner's death. *Shuff*, 967 F.2d at 979-980, 16 BLR at 2-93.

² We affirm, as uncontested on appeal, the administrative law judge's findings at 20 C.F.R. §§718.202(a)(4) and 718.203, since these findings are not adverse to claimant. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The administrative law judge correctly found that although the miner's family reported a history of "3rd stage black lung" when the miner was admitted to the hospital on the date of his death, no specific diagnosis of pneumoconiosis was made by hospital personnel. Decision and Order at 8; Director's Exhibit 7. The administrative law judge properly found that there is absolutely no medical evidence which establishes that the miner's pneumoconiosis caused, contributed, or hastened his death. The administrative law judge correctly found that the only medical evidence which directly addresses the issue is the miner's death certificate, which states that the miner died due to "Sepsis - Renal Failure." Director's Exhibit 6. We, therefore, affirm, as supported by substantial evidence, the administrative law judge's findings that claimant failed to establish that the miner's death was due to pneumoconiosis, as provided in Section 718.205(c)(1), (2) and (4).³

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

³ We also affirm the administrative law judge's finding that since claimant has not established the presence of complicated pneumoconiosis, claimant also failed to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(3).