

BRB No. 01-0421 BLA

JUANITA VANCE	)		
(Widow of WILLIAM E. VANCE)	)		
	)		
Claimant-Petitioner	)		
	)		
v.	)		
	)		
KOCH CARBON, INCORPORATED	)	DATE	ISSUED:
	)		
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 Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Juanita Vance, Patterson, Virginia, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel,<sup>1</sup> the Decision and Order (00-BLA-0133) of Administrative Law Judge Thomas M. Burke denying benefits on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety

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<sup>1</sup> Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, has requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-188 (1995)(Order).

Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).<sup>2</sup> Based on the filing date of June 25, 1998, the administrative law judge adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718. On the merits, the administrative law judge found that the evidence of record established the existence of pneumoconiosis arising out of coal mine employment, but failed to establish that the miner's death was due to pneumoconiosis. Accordingly, benefits were denied.

On appeal, claimant generally challenges the findings of the administrative law judge. Employer responds, urging affirmance of the Decision and Order of the administrative law judge denying benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), is not participating in this appeal.

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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (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 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).

To establish entitlement to survivor's benefits, 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. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *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). For survivor's claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated

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<sup>2</sup> The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

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. Considering the issue of death due to pneumoconiosis, the administrative law judge found that only Dr. Hunter concluded that coal workers' pneumoconiosis significantly contributed to the miner's death,<sup>3</sup> because although the miner died as a result of cirrhosis, Dr. Hunter concluded that pneumoconiosis was a complicating condition as it caused the miner to be unable to expectorate respiratory secretions. Decision and Order at 14; Director's Exhibit 20. The administrative law judge found that Dr. Kahn, a reviewing pathologist, did not provide an opinion as to whether coal workers' pneumoconiosis contributed to the miner's death, and that although Dr. Stefanini, the autopsy prosector, found that complicating factors in the miner's death were inability to expectorate respiratory secretions, severe chronic obstructive pulmonary disease and massive pleural effusion, he did not relate these conditions to the miner's coal mine employment.<sup>4</sup> The administrative law judge further found that Drs. Naeye and Hansbarger opined that the miner's coal workers' pneumoconiosis was too mild to have contributed to his death which they opined was due to alcoholic liver cirrhosis and renal failure, Director's Exhibits 7, 18, and that Dr. Castle concluded that the miner died of cirrhosis without any hastening by coal workers'

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<sup>3</sup> The administrative law judge incorrectly identified Dr. William Hunter as a pathologist. Decision and Order at 14. Dr. Hunter is a Board certified internist, and was the miner's treating physician. Director's Exhibit 20.

<sup>4</sup> Dr. Stefanini also found that the level of coal workers' pneumoconiosis seen in the miner could be "seen in individuals living in areas with airborne coal dust pollution, as well as in workers exposed to coal dust during underground work." Director's Exhibit 6; Decision and Order at 14.

pneumoconiosis. The administrative law judge further found that Dr. Castle noted that the miner had “a massive right pleural effusion due to ascites and liver failure...which impaired the clearance of secretions...and which occurs even in other individuals who are non coal miners with the same underlying condition of cirrhosis. Employer’s Exhibit 1; Decision and Order at 14-15.

The administrative law judge accorded greatest weight to the opinion of Dr. Castle because he concluded that Dr. Castle conducted the most recent examination of the miner prior to his death and performed the most extensive review of the miner’s medical records over a long period of time, including autopsy records. Decision and Order at 15; Employer’s Exhibit 1. This was rational. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Sabett v. Director, OWCP*, 7 BLR 1-299 (1984). The administrative law judge’s finding that claimant failed to establish that pneumoconiosis hastened the miner’s death is, therefore, affirmed. Further, because claimant has failed to establish death due to pneumoconiosis, an essential element of entitlement in a survivor’s claim, we will not consider the administrative law judge’s findings concerning the existence of pneumoconiosis. *See Neeley, supra*.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge