

BRB No. 98-0771 BLA

DORIS RIFE)
(Widow of JAMES L. RIFE))
)
 Claimant-Petitioner)
)
 v.)
)
 GALE COAL, 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 Denying Survivor's Benefits of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

Doris Rife, Grundy, Virginia, *pro se*.

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

PER CURIAM:

Claimant,¹ without the benefit of counsel,² appeals the Decision and Order Denying Survivor's Benefits (97-BLA-0770) of Administrative Law Judge Stuart A. Levin on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of

¹ Claimant is Doris Rife, surviving spouse of the miner, James L. Rife, who died on February 22, 1990. Director's Exhibit 9. Claimant filed an application for survivor's benefits with the Department of Labor on November 22, 1995. Director's Exhibit 2.

² Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. White is not representing claimant on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

1969, as amended, 30 U.S.C. §901 *et seq.* The administrative law judge concluded that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and 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.

In an appeal by a claimant filed without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Antonio v. Bethlehem Mines Corp.*, 6 BLR 1-702 (1983). 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); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). Employer has not responded to the merits of claimant's appeal.³ The Director, OWCP, has filed a letter indicating that he will not file a brief in the instant case.

To establish entitlement to survivor's benefits, in addition to proving the existence of pneumoconiosis arising out of coal mine employment, *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993), claimant must also establish that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it hastens the miner's death in any way. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992).

The administrative law judge found that the only evidence to address the cause of the miner's death was the death certificate, which listed "carcinoma of the lung, metastatic" as the sole cause of the miner's death Director's Exhibit 9; Decision and Order at 4. The administrative law judge correctly noted that other evidence supports this finding, *i.e.*, a report of a biopsy examination of the miners' lung, Director's Exhibit 14, a report of a biopsy examination on the miner's bone marrow, Director's Exhibit 15, evidence of chemotherapy, Director's Exhibits 16, 17, 18, 19, 20, 21, 22, 23, 31, 32, and of radiation therapy treatments, Director's Exhibits 24, 31. The administrative law judge also found that the opinions of Drs. Caldwell and Strader who diagnosed a chronic obstructive pulmonary disease were not sufficient to establish pneumoconiosis because they did not discuss the basis for their

³ Employer has responded that the legal name of his business is Gale Coal, Incorporated, not Gale Coal Company. The caption has been corrected accordingly.

diagnoses nor the cause of the disease. Decision and Order at 4. Moreover, neither of these opinions discuss the cause of the miner's death. Further, the administrative law judge noted that none of the evidence establishes the existence of pneumoconiosis. Decision and Order at 2-4.

As it is claimant's burden to establish that the miner's pneumoconiosis was a substantially contributing cause of the miner's death *i.e.*, that it hastened the miner's death, *see Shuff, supra*, we hold that the administrative law judge's finding that the miner's death was not due to pneumoconiosis is supported by substantial evidence. We affirm, therefore, the administrative law judge's finding that the evidence fails to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). As this finding precludes entitlement in a survivor's claim, we affirm the administrative law judge's denial benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge