

BRB No. 99-0579 BLA

GLORIA S. NELSON)	
(Widow of LAWRENCE NELSON, JR.))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ARCH OF WEST VIRGINIA/ APOGEE COAL COMPANY)	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 Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Gloria Nelson, Man, West Virginia, *pro se*.

Mary Rich Maloy (Jackson & Kelly, PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, the miner's widow, without the assistance of counsel, appeals the Decision and Order Denying Survivor's Benefits (97-BLA-0595) of Administrative Law Judge Daniel F. Sutton 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). Based on the filing date, the administrative law judge applied the regulations found at 20 C.F.R. Part 718, and found that claimant failed to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. Claimant appeals, generally contending that the administrative law judge erred in failing to award benefits. Employer responds,

urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, is not participating in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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). 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. 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).

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 Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The administrative law judge correctly found that:

... no physician has provided an opinion that pneumoconiosis in any way contributed to or hastened Mr. Nelson's death, and the Employer has submitted a substantial body of uncontradicted expert opinion that pneumoconiosis played no role in his death. On this record, I find that Claimant has not met her burden of proving by a preponderance of the evidence that Mr. Nelson's death was due to pneumoconiosis.

Decision and Order at 5; Director's Exhibits 5 and 6; Employer's Exhibits 1, 3, 4, 6, 7, 8. As claimant has not produced any evidence which could meet her burden, the administrative law judge properly denied benefits. *Kirk v. Director, OWCP*, 86 F.3d 1151, 20 BLR 2-276 (4th Cir. 1996); *Shuff v. Cedar Coal Co.*, 969 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993); *see also Piney Mountain Coal Co. v. Mays*, 176 F. 3d 753, 21 BLR 2-587 (4th Cir. 1999). We therefore affirm the administrative law judge's finding that claimant has failed to establish death due to pneumoconiosis, and accordingly affirm the denial of benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge