

BRB No. 89-3587 BLA

IDA J. ALFREY )  
(Widow of RALPH M. ALFREY) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 EASTERN ASSOCIATED COAL )  
 CORPORATION ) )  
 )  
 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 Robert J. Shea, Administrative Law Judge, United States Department of Labor.

Ida J. Alfrey, Oceana, West Virginia, pro se.

Paul E. Frampton (Bowles Rice McDavid Graff & Love), Charleston, West Virginia, for employer.

Before: BROWN and DOLDER, Administrative Appeals Judges, and FEIRTAG, Administrative Law Judge.\*

PER CURIAM:

Claimant, the surviving spouse, appeals, without legal representation, the

Decision and Order (89-BLA-0124) of Administrative Law Judge Robert J. Shea denying benefits on a survivor's claim filed pursuant to the provisions of Title IV of \*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

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 reviewed this claim pursuant to the provisions of 20 C.F.R. Part 718, and credited the miner with thirty-four years of qualifying coal mine employment. The administrative law judge found that claimant established the existence of simple pneumoconiosis arising out of coal mine employment under 20 C.F.R. §§718.202(a)(2) and 718.302, but further found that the evidence was insufficient to establish death due to pneumoconiosis under 20 C.F.R. §718.205(c). Accordingly, benefits were denied. Claimant appeals, contending that the evidence establishes entitlement under Part 718. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.<sup>1</sup>

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<sup>1</sup> The administrative law judge's findings under Sections 718.202(a)(2) and 718.302, and with regard to length of coal mine employment, which are not adverse

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to claimant, are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

In an appeal by a claimant filed without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. 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); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, the evidence must establish that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c); see generally Neeley v. Director, OWCP, 11 BLR 1-85 (1988); Boyd v. Director, OWCP, 11 BLR 1-39 (1988). Survivors are not eligible for benefits where the miner's death was caused by a traumatic injury, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death. 20 C.F.R. §718.205(c)(4); see Haduck v. Director, OWCP, 14 BLR 1-29 (1990). The administrative law judge properly determined that the evidence was insufficient to establish invocation of the irrebuttable presumption of death due to pneumoconiosis under 20 C.F.R. §718.304, as the autopsy evidence established that the miner had simple pneumoconiosis but not complicated pneumoconiosis. Decision and Order at 5; Director's Exhibit 7. Further, the administrative law judge considered all of the relevant evidence of record, and

rationaly found that claimant failed to establish that the miner's death was due to pneumoconiosis under Section 718.205(c), based on the death certificate, which listed a self-inflicted gunshot wound to the throat as the cause of death; the report of Dr. Rasheed, the autopsy prosector, who determined that the cause of death was a gunshot wound; and the consultative report of Dr. Naeye, who opined that pneumoconiosis did not contribute to the miner's death. Decision and Order at 5; Director's Exhibits 6, 7; Employer's Exhibit 2; see Haduck, supra. We must, therefore, affirm the administrative law judge's findings under Section 718.205(c), as they are based on substantial evidence.

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

SO ORDERED.

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

ERIC FEIRTAG  
Administrative Law Judge