

BRB No. 99-1083 BLA

RUBY WEAVER)	
(Widow of FARRIS WEAVER))	
)	
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 - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Ruby Weaver, McKee, Kentucky, *pro se*.

Michelle S. Gerdano (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, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denial of Benefits (97-BLA-1782) of Administrative Law Judge Daniel J. Roketenetz on a survivor's 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 administrative law judge found that claimant established eight years, nine months and six days of coal mine employment and, based on the filing date of the claim, applied the regulations found at 20 C.F.R. Part 718. The administrative law judge determined that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or 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. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the administrative law judge's denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, we 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).

In a survivor's 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 or that pneumoconiosis was a substantially contributing cause of death. 20 C.F.R. §§718.202, 718.203, 718.205(c); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). Moreover, the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that death due to pneumoconiosis may be established by showing that the miner's death was hastened by pneumoconiosis. *Brown v. Rock Creek Coal Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

In the instant case, the administrative law judge reviewed all the evidence of record and found that the only evidence which addressed the cause of the miner's death was the death certificate and the medical opinion of Dr. Broudy. The death certificate lists the cause of death as "coronary." Director's Exhibit 5. Dr. Broudy reviewed the medical evidence and found that the evidence neither confirms the presence of pneumoconiosis, nor establishes that pneumoconiosis contributed to or hastened the miner's death. Director's Exhibit 26. None of the other opinions of record found that the miner's death was caused or hastened by pneumoconiosis. The administrative law judge, therefore, properly found that the record is devoid of any evidence which could sustain claimant's burden of establishing death due to pneumoconiosis. *See Brown, supra*; *see also Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).¹

¹ As we affirm on this basis, we need not address whether the administrative law judge properly determined that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

Accordingly, the Decision and Order - Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge