

BRB No. 02-0270 BLA

MAVIS THOMPSON)	
(Widow of BUD THOMPSON))	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Mavis Thompson, Fort Gay, West Virginia, *pro se*.

Jennifer U. Toth (Eugene Scalia, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ representing herself, appeals the Decision and Order (00-BLA-0746) of Administrative Law Judge Linda S. Chapman denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as

¹Claimant is the surviving spouse of the deceased miner who died on July 31, 1999. Director's Exhibit 3.

amended, 30 U.S.C. §901 *et seq.* (the Act).² The instant case involves a survivor's claim filed on August 19, 1999.³ The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge also found that claimant is entitled to a presumption that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge, however, found that the evidence is insufficient to establish 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. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. The

²The 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 20 C.F.R. Parts 718, 722, 725, and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³The miner filed a claim on May 27, 1983. Director's Exhibit 8. In a Decision and Order dated November 30, 1988, Administrative Law Judge Edward Terhune Miller found that the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) (2000). *Id.* Judge Miller also found that the miner was entitled to a presumption that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b) (2000). *Id.* Judge Miller further found that the evidence was sufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204 (2000). *Id.* Accordingly, Judge Miller awarded benefits. *Id.* By Decision and Order dated June 13, 1991, the Board affirmed Judge Miller's award of benefits. *Thompson v. Director, OWCP*, BRB No. 89-0107 BLA (June 13, 1991) (unpublished).

Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue 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 findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance 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).

Because the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁴ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). Pneumoconiosis is a "substantially contributing cause" of a 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*, 113 S.Ct. 969 (1993).

⁴Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.
- (4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.
- (5) Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death.

20 C.F.R. §718.205(c).

In the instant case, the administrative law judge properly found that there was no medical evidence supportive of a finding that the miner's death was due to pneumoconiosis.⁵ Decision and Order at 7-8. We, therefore, affirm the administrative law judge's finding that the medical evidence is insufficient to establish that the miner's death was due to pneumoconiosis.⁶ See 20 C.F.R. §718.205(c); *Shuff, supra*.

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

SO ORDERED.

⁵Dr. Kimmey completed the miner's death certificate. Dr. Kimmey attributed the miner's death to rectal cancer. Director's Exhibit 3.

Dr. Ranavaya reviewed the medical evidence. Dr. Ranavaya completed a questionnaire on January 6, 2000. Director's Exhibit 5. Dr. Ranavaya indicated that the miner's death was not due to pneumoconiosis. Dr. Ranavaya further indicated that pneumoconiosis was not a substantially contributing cause or factor leading to the miner's death. *Id.* Dr. Ranavaya also indicated that the miner's death was not caused by complications of pneumoconiosis. *Id.*

⁶Because there is no evidence of complicated pneumoconiosis in the record, the administrative law judge properly found that claimant was precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. Decision and Order at 4 n.2.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge