

BRB No. 98-1447 BLA

VIRGINIA E. RICHARDS)
(Widow of ARLIE C. RICHARDS))
)
 Claimant-Petitioner)
)
 v.)
)
 UNION CARBIDE CORPORATION) DATE ISSUED:
)
 Employer-Respondent)
)
 and)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Virginia E. Richards, Mammoth, West Virginia, *pro se*.

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

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ without the benefit of counsel, appeals the Decision and Order (95-BLA-0799) of Administrative Law Judge Clement J. Kichuk denying benefits 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). This case is before the Board for

¹ Claimant is Virginia E. Richards, surviving spouse of the miner, Arlie C. Richards, who died on January 22, 1994. Director's Exhibit 5.

the second time.² Following a hearing, the administrative law judge concluded that the evidence failed to establish that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

In an appeal filed by a claimant 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, in response, asserts that the administrative law judge's findings are supported by substantial evidence, and urges affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a brief in the instant case.

² By Decision and Order dated September 12, 1996, the Board vacated Administrative Law Judge Charles P. Rippey's decision and remanded the case for a *de novo* hearing on procedural and substantive grounds finding claimant was improperly denied the assistance of counsel and finding that all relevant evidence, in particular the miner's death certificate listing pneumoconiosis as a significant condition contributing to death, was not considered by Judge Rippey as required by Section 718.205(c). *Richards v. Union Carbide Corp.*, BRB No. 95-2206 BLA (Sep. 12, 1996).

The administrative law judge found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). The administrative law judge correctly recognized that the miner's death certificate, signed by his treating physician, Dr. Ward, stated that the miner's cause of death was "congestive heart failure due to or as a consequence of ... coronary artery disease", but listed "pneumoconiosis" as an other significant condition. He noted, however, that no autopsy had been performed. Director's Exhibit 5; Decision and Order at 9. He noted further that the reports of Drs. Zalvidar, Castle and Crisalli, Director's Exhibit 13; Employer's Exhibits 2, 4, 5, specifically found that the miner's death was due to coronary problems and was not related to pneumoconiosis. Decision and Order at 10. The administrative law judge permissibly credited the reports of Drs. Zalvidar, Castle and Crisalli over Dr. Ward's opinion as set forth in the death certificate because he found them better documented and reasoned. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*). Further, he credited the opinions of Drs. Zalvidar, Castle and Crisalli as he found that they possessed superior qualifications. *See Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). As it is claimant's burden to establish that the miner's pneumoconiosis was a substantial contributing cause of the miner's death, *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992); *see also Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988), we affirm the administrative law judge's finding as it is supported by substantial evidence. We affirm, therefore, the administrative law judge's finding that the medical evidence fails to establish death due to pneumoconiosis at Section 718.205(c).³ Accordingly, we affirm the administrative law judge's denial of survivor's benefits in the instant case.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

³ The Board need not address the administrative law judge's findings with respect to the existence of pneumoconiosis at Section 718.202(a), as it is rendered moot by the Board's disposition of the case. *See Warman v. Pittsburg and Midway Coal Co.*, 8 BLR 1-390 (1985); *Rematta v. Director, OWCP*, 8 BLR 1-214 (1985).

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge