

BRB No. 99-0967 BLA

MARY SULIKOSKI	)	
(Widow of JOSEPH SULIKOSKI)	)	
	)	
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 Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Sarah M. Hurley (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: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order (98-BLA-1249) of Administrative Law Judge Ralph A. Romano 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 amended, 30 U.S.C. §901 *et seq.* (the Act). The instant case involves a survivor's

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<sup>1</sup>Claimant is the surviving spouse of the deceased miner who died on February 8, 1998. Director's Exhibit 3.

claim filed on March 6, 1998.<sup>2</sup> The administrative law judge found that claimant failed 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 contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

The Board 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).

Inasmuch as 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). Under Section 718.205(c)(2), pneumoconiosis will be considered a substantially contributing cause of the miner's death if it actually hastened the miner's death. *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

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<sup>2</sup>The miner filed a claim for benefits on April 17, 1989. Director's Exhibit 13. In a Decision and Order dated June 20, 1991, Administrative Law Judge Paul A. Teitler awarded benefits. *Id.* The miner was receiving benefits at the time of his death. See Director's Exhibit 1.

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718. The administrative law judge permissibly found that the cause of death listed on the miner's death certificate was illegible.<sup>3</sup> Decision and Order at 5; Director's Exhibit 3. The administrative law judge further found that Dr. Spagnolo's opinion "affirmatively establishes that pneumoconiosis played no part in the miner's death."<sup>4</sup> Decision and Order at 5; Director's Exhibit 9. The record does not contain any evidence supportive of a finding of death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). We, therefore, affirm the administrative law judge's finding 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).<sup>5</sup>

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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<sup>3</sup>We note that the death certificate appears to list the miner's cause of death as a cerebrovascular accident. See Director's Exhibit 3. Diabetes Mellitus is listed as a significant condition contributing to the miner's death. *Id.*

<sup>4</sup>Dr. Spagnolo reviewed the medical evidence of record. In a report dated June 14, 1998, Dr. Spagnolo opined that the miner's death "was unrelated to and not substantially hastened, even briefly, by pneumoconiosis nor was pneumoconiosis a contributing factor in his death." Director's Exhibit 9. Dr. Spagnolo further opined that the obvious cause of the miner's death was carotid artery disease and impaired cerebral perfusion leading to the onset of coma and death. *Id.*

<sup>5</sup>Because there is no evidence of complicated pneumoconiosis in the record, the administrative law judge properly found that claimant is precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. See 20 C.F.R. §718.205(c)(3); Decision and Order at 5.

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JAMES F. BROWN  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge