

BRB No. 99-0971 BLA

NANNIE L. BLANKENSHIP)
(Widow of BURGESS BLANKENSHIP))
)
Claimant-Petitioner)
)
v.) DATE ISSUED:
)
OLD BEN COAL COMPANY)
)
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 Daniel L. Leland, Administrative Law Judge,
United States Department of Labor.

Nannie L. Blankenship, Red Jacket, West Virginia, *pro se*.

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting
Administrative Appeals Judge.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (98-BLA-0482) of Administrative Law Judge Daniel L. Leland 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 instant case involves a survivor's claim filed on May 6, 1997. After crediting the miner with thirty-one and one-half years of coal mine employment, the administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a), 718.203(b), but insufficient to establish that the miner's death was due to pneumoconiosis

pursuant to 20 C.F.R. §718.205. Accordingly, benefits were denied. On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs has filed a letter indicating that he will not respond in this appeal.¹

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *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).

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment, that the miner's death was due to pneumoconiosis and that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that death was caused by complications of pneumoconiosis. See 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction the instant case arises, has held that any condition that hastens the miner's death is a substantially contributing cause of death for purposes of Section 718.205(c)(2). See *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), cert. denied 113 S.Ct. 969 (1993).

¹We affirm the administrative law judge's designation of employer as the responsible operator as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

We affirm the administrative law judge's finding that the miner's death was not due to pneumoconiosis, as it is rational and supported by substantial evidence. 20 C.F.R. §718.205(c)(1)-(3). The administrative law judge acted properly, as each of the physicians who conducted the autopsy or examined the post-mortem biopsy slides determined that pneumoconiosis did not cause or contribute to the miner's death.² Director's Exhibits 11, 22,

²On the miner's death certificate, Dr. Chapman listed metastatic lung cancer as the cause of death. Director's Exhibit 10. Dr. Chang conducted an autopsy concluding that the miner's death was due to lung cancer and metastatic cancer of the C2 vertebra, but that simple coal workers' pneumoconiosis was not the major contributing factor to the miner's demise. Director's Exhibit 11. Dr. Chang also submitted a letter stating that the miner's pneumoconiosis did not cause, contribute to, or hasten his death. Employer's Exhibit 5. Drs. Kleinerman, Caffrey, Hansbarger and Hutchins reviewed the autopsy slides and opined that because there was no evidence of coal workers' pneumoconiosis, coal workers' pneumoconiosis did not play a role in the miner's death. Employer's Exhibits 3, 6; Director's Exhibits 22, 23, 25. Dr. Gaziano reviewed the autopsy report and filled out a form, agreeing that the miner had simple pneumoconiosis, but that it did not contribute to his death. Director's Exhibit 13. Drs. Fino and Castle reviewed the medical records and concluded that the miner did not suffer from coal workers'

23, 25, 25; Employer's Exhibits 2, 3, 5, 6, 7; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Inasmuch as the administrative law judge properly found no evidence that would support claimant's burden of establishing death due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or that the miner's death was caused by complications of pneumoconiosis, we must affirm the denial of benefits.³ *See* 20 C.F.R. §718.205(c)(1)-(3); *Shuff, supra*.

pneumoconiosis and his death was not caused by, contributed to, or hastened by coal workers' pneumoconiosis. Director's Exhibits 2, 5, 7.

³ Inasmuch as the record is devoid of evidence of complicated pneumoconiosis, claimant cannot establish death due to pneumoconiosis under 20 C.F.R. §718.205(c)(3). In light of the foregoing, we need not remand this case for reconsideration of the administrative law judge's findings at 20 C.F.R. §718.202(a)(1)-(4), notwithstanding the decision of the United States Court of Appeals for the Fourth Circuit in *Island Creek Coal Co. v. Compton*, F.3d , 2000 WL 524798, No. 98-2051 (4th Cir. 2000).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge