

BRB No. 00-0956 BLA

WANDA C. PROFFITT )  
(Widow of WILLIAM H. PROFFITT) )

Claimant-Petitioner )

v. )

DATE ISSUED:

UNITED STATES STEEL MINING )  
COMPANY )

Employer- )  
Respondent )

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, )  
UNITED STATES DEPARTMENT OF )  
LABOR )

DECISION AND ORDER

Party-In-Interest

Appeal of the Decision and Order Denying Survivor's Benefits of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Wanda C. Proffitt, North Tazewell, Virginia, *pro se*.

Howard G. Salisbury (Kay Casto & Chaney PLLC), Charleston, West Virginia, for employer.

Mary Forrest-Doyle (Judith E. Kramer, Acting 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, SMITH, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appears without the assistance of counsel and appeals the Decision and Order Denying Survivor's Benefits (98-BLA-0518) of Administrative Law Judge Daniel F. Sutton with respect to 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).<sup>1</sup>

The administrative law judge considered the survivor's claim, filed on April 6, 1998, under the regulations set forth in 20 C.F.R. Part 718 (2000).<sup>2</sup> The administrative law judge determined, pursuant to 20 C.F.R. §§718.202(a)(2) and 718.203(b), that the miner

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<sup>1</sup>Claimant is the surviving spouse of the deceased miner, William H. Proffitt, who died on September 16, 1996. Director's Exhibit 7. Claimant was also unrepresented by counsel before the administrative law judge. The administrative law judge acted properly in accepting claimant's written waiver of her right to a hearing and in giving claimant the opportunity to submit evidence of her own and to object to the admission of the exhibits proffered by the Director, Office of Workers' Compensation Programs. 20 C.F.R. §725.461(a).

<sup>2</sup>The 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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). For the convenience of the parties, all citations to the regulations herein refer to the prior regulations, unless otherwise noted, as the amended regulations do not affect the outcome of this case. *See* discussion, *infra*, at 3.

was suffering from pneumoconiosis arising out of coal mine employment at the time of his death. The administrative law judge further found, however, that claimant did not prove that pneumoconiosis or complications of pneumoconiosis caused, contributed to, or hastened the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant contends generally that she is entitled to benefits. Employer has responded and urges affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not responded to the merits of claimant's appeal.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on March 16, 2001, to which the Director and employer have responded, asserting that the regulations at issue in the lawsuit do not affect the outcome of this case. Claimant did not respond to the Board's Order.<sup>3</sup> Having reviewed the briefs and the record in the case at bar, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, the Board will proceed to adjudicate the merits of this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board 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). The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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 order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718, claimant was required to prove that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantial contributing cause or factor leading to the miner's

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<sup>3</sup>Pursuant to the Board's instructions, the failure of a party to submit a brief within 20 days following receipt of the Board's Order, is construed as a position that the challenged regulations will not affect the outcome of this case.

death, or that the miner's death was caused by complications of pneumoconiosis.<sup>4</sup> 20 C.F.R. §§718.1, 718.2, 718.202, 718.203, 718.205(c); *see 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 present case arises, has held that evidence demonstrating that pneumoconiosis hastened the miner's death establishes that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to Section 718.205(c)(2).<sup>5</sup> Decision and Order at 2; *see Shuff v. Cedar Coal Co.*, 969 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's findings of fact and conclusions of law under Section 718.205(c) are supported by substantial evidence and contain no reversible error therein. The administrative law judge reviewed the medical evidence of record, which consisted of the death certificate prepared by Dr. Eells and the autopsy report of Dr. Dy and permissibly determined that they do not support a finding that pneumoconiosis caused, contributed to or hastened the miner's death. The administrative law judge rationally concluded that the death certificate is insufficient to establish that pneumoconiosis played a role in the miner's demise, as Dr. Eells identified arteriosclerotic cardiovascular disease as the sole cause of death. Decision and Order at 5; Director's Exhibit 7; *see Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *cf. Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989).

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<sup>4</sup>The administrative law judge determined correctly that establishing death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(3) was not an option available in this case, as the record does not contain any evidence of complicated pneumoconiosis. Decision and Order at 4; 20 C.F.R. §§718.205(c)(3), 718.304.

<sup>5</sup>The present case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant's coal mine employment occurred in West Virginia. Director's Exhibit 3; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

In addition, the administrative law judge acted within his discretion in finding that Dr. Dy's autopsy report does not support a finding that the miner's death was related to pneumoconiosis in any way, as Dr. Dy attributed the miner's demise to acute coronary insufficiency from complete occlusion of the right coronary artery and did not state that pneumoconiosis or a pulmonary impairment related to dust exposure in coal mine employment contributed in any manner to death. Decision and Order at 5; Director's Exhibit 8; *see Shuff, supra; Neeley, supra*. Inasmuch as the administrative law judge properly determined that the relevant medical evidence does not support a finding that pneumoconiosis caused, contributed to, or hastened the miner's death, we affirm the administrative law judge's finding that claimant has not established that the miner's death was due to pneumoconiosis under Section 718.205(c).<sup>6</sup> *Id.*

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<sup>6</sup>Inasmuch as we have affirmed the administrative law judge's finding that claimant did not satisfy her burden of proof under 20 C.F.R. §718.205(c), we need not address employer's allegation of error regarding the administrative law judge's finding under 20 C.F.R. §718.202(a)(2). Error, if any, committed by the administrative law judge in his determination that the autopsy evidence supported a finding of pneumoconiosis is harmless. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order Denying Survivor's Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge