

BRB No. 02-0109 BLA

GLENN A. J. JONES)	
(Widow of JOHN H. JONES))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CLINCHFIELD COAL COMPANY)	
)	DATE ISSUED:
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 Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Glenna J. Jones, Dante, Virginia, *pro se*.¹

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

¹Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Claimant² appeals the Decision and Order (01-BLA-1061) of Administrative Law Judge Alice M. Craft 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).³ The instant case involves a survivor's claim filed on October 18, 1999.⁴ The administrative law judge found that the evidence was 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. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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

²Claimant is the surviving spouse of the deceased miner who died on June 14, 1999. Director's Exhibit 10.

³The 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.

⁴The miner filed a claim on June 1, 1979. Director's Exhibit 31. The district director denied the claim on September 25, 1980. *Id.* There is no indication that the miner took any further action in regard to his 1979 claim.

The miner filed a second claim on April 8, 1994. Director's Exhibit 32. The district director denied the claim on September 28, 1994. *Id.* There is no indication that the miner took any further action in regard to his 1994 claim.

The miner filed a third claim on October 23, 1995. Director's Exhibit 33. In a Decision and Order dated May 20, 1998, Administrative Law Judge Donald B. Jarvis found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). *Id.* Judge Jarvis also found that the evidence was insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). *Id.* Accordingly, Judge Jarvis denied benefits. By Decision and Order dated May 20, 1998, the Board affirmed Judge Jarvis's findings pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000) and 725.309 (2000). *Jones v. Clinchfield Coal Co.*, BRB No. 97-1253 BLA (May 20, 1998) (unpublished). The Board, therefore, affirmed Judge Jarvis's denial of benefits. *Id.* There is no indication that the miner took any further action in regard to his 1995 claim.

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).⁵ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director*,

⁵Section 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.

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).

(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).

The administrative law judge noted that the miner's death certificate was the only evidence of record which, if credited, could support a finding of death due to pneumoconiosis. Decision and Order at 5-6. The miner's death certificate, completed by Dr. Bailey, lists pneumoconiosis as a contributing factor to the miner's death.⁶ Director's Exhibit 10. However, inasmuch as Dr. Bailey provided no explanation for his finding, the administrative law judge properly found that Dr. Bailey's opinion was not sufficiently reasoned. See *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 5-6; Director's Exhibit 10. The record does not contain any other evidence supportive of a finding that the miner's death was due to pneumoconiosis.⁷ Inasmuch as it is based upon

⁶Dr. Bailey completed the miner's death certificate on June 17, 1999. Director's Exhibit 10. Dr. Bailey attributed the miner's death to cardiopulmonary arrest due to respiratory failure due to pneumonia. *Id.* Although it is difficult to read, the administrative law judge indicated that Dr. Bailey appeared to list "pneumoconiosis" as an "other significant condition contributing to death." Decision and Order at 5; Director's Exhibit 10.

In a summary of the miner's final hospitalization, Dr. Bailey noted that the miner was admitted from the Emergency Room on June 14, 1999 with pneumonia. Director's Exhibits 13, 15. The miner died on June 14, 1999. *Id.* Dr. Bailey's discharge diagnoses were: (1) pneumonia; (2) cardiopulmonary arrest; and (3) status post cerebrovascular accident. *Id.*

⁷Dr. Turjman performed an autopsy limited to the chest on June 15, 1999. Director's Exhibit 11. Dr. Turjman diagnosed coal workers' pneumoconiosis and centrilobular emphysema with extensive acute bronchopneumonia. *Id.* Dr. Turjman opined that the "terminal event in this patient appears to be related to extensive right lung bronchopneumonia that has decompensated and [sic] already compromised respiratory status." *Id.* Although Dr. Turjman diagnosed pneumoconiosis, he did not link the miner's death to the disease. Consequently, Dr. Turjman's opinion is insufficient to support a finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

Dr. Naeye reviewed the miner's autopsy slides and medical evidence. In a report dated February 2, 2000, Dr. Naeye opined that the miner's coal workers' pneumoconiosis "was far too mild to have caused any measurable abnormalities in lung function" and, therefore, "could not have caused any disability, hypoxemia or in other way hastened his death." Director's Exhibit 12. Dr. Naeye opined that the miner's death was due to acute lobular pneumonia. *Id.*

Dr. Tomashefski reviewed the miner's autopsy slides and medical evidence. In a report dated June 6, 2000, Dr. Tomashefski opined that the miner's coal workers' pneumoconiosis was not a cause of, nor a contributory factor in, his death. Director's Exhibit

substantial evidence, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis.⁸ See 20 C.F.R. §718.205(c); *Shuff, supra*.

27. Dr. Tomashefski further opined that the miner's death was unrelated to his coal mine employment. *Id.*

Dr. Caffrey also reviewed the miner's autopsy slides and medical evidence. In a report dated November 20, 2000, Dr. Caffrey opined that the miner's coal workers' pneumoconiosis did not cause or contribute to his death. Employer's Exhibit 3.

⁸Because there is no evidence of complicated pneumoconiosis in the record, claimant is precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304 (2000).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge