

BRB No. 97-1647 BLA

NELL F. SUTHERLAND)
(Widow of ALFRED SUTHERLAND))
)
Claimant-Petitioner)
)
v.)
)
MORGAN MINING COMPANY) DATE ISSUED:
BRUCE COAL COMPANY)
CLINCHFIELD COAL COMPANY)
)
Employers-Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

Nell F. Sutherland, Haysi, Virginia, *pro se*.¹

Laura Metcoff Klaus and Gregory S. Feder (Arter & Hadden), Washington, D.C., for Bruce Coal Company.

H. Ashby Dickerson (Penn, Stuart & Eskridge), Abingdon, Virginia, for Clinchfield Coal Company.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

¹Tim White, 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).

Claimant,² without the assistance of counsel, appeals the Decision and Order (97-BLA-0229) of Administrative Law Judge Stuart A. Levin 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). The administrative law judge credited the miner with at least ten years of coal mine employment and adjudicated this survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence 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. Claimant generally challenges the administrative law judge's denial of benefits. Bruce Coal Company and Clinchfield Coal Company respond, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.³

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. See *McFall v. Jewell Ridge Coal Corp.*, 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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

²Claimant is the widow of the deceased miner, Alfred Sutherland, who died on November 23, 1995. Director's Exhibits 1, 8. The miner filed a claim on September 20, 1988. Director's Exhibit 32. On September 10, 1990, Administrative Law Judge Giles J. McCarthy issued a Decision and Order denying benefits in the miner's claim. *Id.* Inasmuch as the miner did not pursue his claim any further, the denial became final. Claimant filed her survivor's claim on December 27, 1995. Director's Exhibit 1.

³Inasmuch as the administrative law judge's length of coal mine employment finding, which is not adverse to this *pro se* claimant, is not challenged on appeal, we affirm this finding. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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).⁴ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The United States Court of Appeals for the Fourth Circuit, wherein jurisdiction of this case arises, adopted the standard whereby pneumoconiosis will be considered a substantially contributing cause of the miner's death if it actually hastened the miner's death. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993). The administrative law judge stated that "there is no credible evidence that the miner's death was related in any way to his simple pneumoconiosis." Decision and Order at 4. Whereas Dr. Sutherland opined that pneumoconiosis contributed to the miner's death, Director's Exhibit 11, Drs. Hansbarger and Sargent opined that pneumoconiosis did not contribute to the miner's death, Employer's Exhibits 22, 26. The death certificate signed by Dr. Sargent lists renal failure, diabetes mellitus and coronary artery disease as causes of the miner's death. Director's Exhibit 8. Although Dr. Abrenio opined that the miner suffered from coal workers' pneumoconiosis, Dr. Abrenio also opined that "[t]he present (sic) of pleural effusion, pulmonary congestion and intra-alveolar hemorrhage suggests the [miner] expired from congestive heart failure." Director's Exhibit 9. Similarly, although Dr. Naeye opined that the miner suffered from coal workers' pneumoconiosis, Dr. Naeye further opined that there is "[n]ot enough information...available to know whether [coal workers' pneumoconiosis] was severe enough to...have hastened his death." Director's Exhibit 10. The administrative law judge properly discredited Dr. Sutherland's opinion because he found it to be not well reasoned.⁵ See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Thus, since

⁴Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, 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.

20 C.F.R. §718.205(c).

⁵The administrative law judge stated that Dr. Sutherland "did not provide a well-reasoned medical evaluation which might support his conclusion that the miner's pneumoconiosis contributed to his death." Decision and Order at 3. The administrative law judge observed that "Dr. Sutherland does not explain how he drew medical conclusions from autopsy findings which neither the prosector nor Dr. Naeye were (sic) able to reach based upon the autopsy data." *Id.* at 4.

the record contains no credible evidence which could support claimant's burden at 20 C.F.R. §718.205(c), we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c), as supported by substantial evidence. *See Shuff, supra.*

Hence, in view of our affirmance of 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), an essential element of entitlement under Part 718, see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986), we affirm the administrative law judge's denial of benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge