

BRB No. 98-1256 BLA

BETTY J. BREEDING)	
(Widow of WILLARD BREEDING))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
KENTLAND-ELKHORN COAL COMPANY)	
)	DATE ISSUED: <u>6/16/99</u>
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 Joan Huddy Rosenzweig,
Administrative Law Judge, United States Department of Labor.

Betty J. Breeding, Big Rock, West Virginia, *pro se*.

Lois A. Kitts (Baird, Baird, Baird & Jones, P.S.C.),
Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel,² appeals the Decision and Order (96-BLA-1050) of Administrative Law Judge Joan Huddy Rosenzweig 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 found that the miner had twenty-seven years of qualifying coal mine employment and that claimant established that the miner had pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). The administrative law judge then found that claimant failed to establish that the miner's death was due to, or hastened by, pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer responds urging affirmance of the denial of benefits. The Director, Office of Workers'

¹Claimant is Betty J. Breeding, the miner's widow, who filed a survivor's claim for benefits on November 10, 1994. Director's Exhibit 1. The miner, Willard Breeding, filed a claim for benefits on February 15, 1986, which was ultimately denied on October 20, 1989. Director's Exhibit 75. The miner died on June 3, 1994. Director's Exhibit 6.

²Ron Carson, a benefits counselor with Stone Mountain Health Services of Oakwood, Virginia, requested an appeal on behalf of claimant but is not representing her on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, BRB No. 94-3940 BLA (May 19, 1995) (Order).

Compensation Programs, responds declining to submit a response brief on appeal.³

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. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We 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 into the Act by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

³We affirm the administrative law judge’s decision to credit the miner with twenty-seven years of coal mine employment and his finding that claimant established the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(2) as unchallenged on appeal and not adverse to claimant. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In order to establish entitlement to benefits under Part 718 based on a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that death was due to, or hastened by, pneumoconiosis, that the miner's death was caused by complications of pneumoconiosis, or that the miner suffered from complicated pneumoconiosis.⁴ See 30 U.S.C. §901(a); 20 C.F.R. §§718.1, 718.202, 718.203, 718.204, 718.205(c); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

Pursuant to Section 718.205(c), the administrative law judge considered the medical evidence of record to determine if pneumoconiosis either caused or hastened the miner's death. The medical evidence of record regarding the cause of the miner's death consists of the death certificate,⁵ a summary of the miner's final hospital treatments submitted by Dr. Patel, the autopsy report submitted by Dr. Abrenio, and the medical opinions of Drs. Naeye, Hutchins, Caffrey, Fino and Branscomb. Director's Exhibits 6-8, 11, 70, 71; Employer's Exhibit 1. None of this evidence indicates that pneumoconiosis either caused or hastened the miner's death. Thus, the administrative law judge properly found that claimant failed to establish that pneumoconiosis caused or hastened the miner's death pursuant to Section 718.205(c)(1) and (c)(2). See 20 C.F.R. §718.205(c)(1), (c)(2); *Shuff, supra*. The administrative law judge also properly found that the irrebuttable presumption of death due to pneumoconiosis under 20 C.F.R. §718.304 is inapplicable in the instant case because the record contains no evidence of complicated pneumoconiosis. 20 C.F.R. §718.205(c)(3). Consequently, we affirm the administrative law judge's finding that the evidence of record does not support a finding that pneumoconiosis caused or hastened the miner's death in any way pursuant to Section 718.205(c)(1)-

⁴We apply the law handed down by the United States Court of Appeals for the Fourth Circuit the instant case because claimant's last coal mine employment occurred in West Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1984)(*en banc*); Director's Exhibit 2. The United States Court of Appeals for the Fourth Circuit 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 20 C.F.R. §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).

⁵The death certificate, signed by Dr. Patel, listed pneumonia with respiratory failure due to brain tumor and gastrointestinal bleeding as the cause of death. Director's Exhibit 6.

(3), and the denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

