

PER CURIAM:

Claimant, the spouse of a deceased miner, appears without the assistance of counsel and appeals the Decision and Order - Denying Benefits (97-BLA-1620) of Administrative Law Judge Lawrence P. Donnelly 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).² The administrative law judge considered the claim, filed on September 12, 1996, pursuant to the regulations set forth in 20 C.F.R. Part 718.³ The administrative law judge determined that the evidence of record is insufficient

²The miner died on July 8, 1995. Dr. Merrick prepared the death certificate and identified cardiorespiratory arrest, due to or as a consequence of, bacterial endocarditis as the cause of death. Director's Exhibit 8. He also identified renal failure and "DIC" as significant conditions contributing to death. *Id.*

³The miner filed a claim for benefits on June 6, 1978. In a Decision and Order issued on June 11, 1987, the Board vacated Administrative Law Judge Donald W. Mosser's finding that the miner did not establish invocation of the interim presumption under 20 C.F.R. §727.203(a). *Lester v. Dominion Coal Co.*, BRB No. 84-2719 BLA (June 11, 1987)(unpub.). On remand, Judge Mosser denied benefits on the ground that employer established rebuttal of the interim presumption pursuant to 20 C.F.R. §727.203(b)(2). The miner filed a request for modification under 20 C.F.R. §725.310. This request was finally denied in a Decision and Order in which the Board affirmed Administrative Law Judge Mollie W. Neal's determination that the miner failed to establish either a change in conditions or a mistake in a determination of fact. *Lester v. Dominion Coal Co.*, BRB No. 94-3944 BLA (Mar. 28, 1995)(unpub.). No further action was taken with respect to the miner's claim.

to establish that the miner's death was due to pneumoconiosis or complications of pneumoconiosis or that pneumoconiosis was a contributing cause of the miner's demise pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. Employer has responded to claimant's appeal and urges affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in 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 in a claim filed after January 1, 1982, claimant must establish 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 death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; see *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 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). See *Richardson v. Director, OWCP*, 94 F.3d 164, 21 BLR 2-373 (4th Cir. 1996); *Shuff v. Cedar Coal Co.*, 969 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

Upon review of the administrative law judge's Decision and Order - Denying Benefits and the relevant evidence of record, we affirm the administrative law judge's finding that claimant did not prove that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), as it is rational and supported by substantial evidence. The administrative law judge indicated correctly that the only evidence of record pertaining to the cause of the miner's demise is the death certificate, prepared by Dr. Merrick, and the medical reports of Drs. Hippensteel and Dahhan. Decision and Order at 3. The administrative law judge determined properly that the death certificate did not assist claimant in satisfying her burden of proof under Section 718.205(c), inasmuch as Dr. Merrick did not identify pneumoconiosis or any coal dust related condition as either an immediate or a contributing cause of death. Decision and Order at 3; Director's Exhibit 8; see 20 C.F.R. §§718.201, 718.205(c); *Shuff, supra*.

With respect to the medical opinions of Drs. Hippensteel and Dahhan, the administrative law judge found correctly that both physicians concluded that neither pneumoconiosis nor a coal dust related condition caused, contributed to, or hastened the miner's death. Decision and Order at 3-4; Employer's Exhibits 1, 3. The administrative law judge also rationally found that the irrebuttable presumption of death due to pneumoconiosis, referenced in Section 718.205(c)(3) and set forth in 20 C.F.R. §718.304, was not available in this case, as there is no evidence establishing that the miner was suffering from complicated pneumoconiosis. Decision and Order at 3. Inasmuch as the administrative law judge properly determined that the record is devoid of evidence supporting a finding that pneumoconiosis or complications of pneumoconiosis caused, contributed to, or hastened the miner's death, we affirm this finding and the denial of benefits. 20 C.F.R. §718.205(c); *Richardson, supra*; *Shuff, supra*; *Neeley, supra*; *Boyd, supra*.

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