

BRB No. 98-1313 BLA

MARY E. SALYER)
(Widow of JAMES D. SALYER))
)
 Claimant-Petitioner)
)
 v.)
)
 CLINCHFIELD COAL COMPANY) DATE ISSUED:
)
 and)
)
 EMPLOYER'S SERVICE CORPORATION)
)
 Employer/Carrier)
 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 Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Caleb Echterling (United Mine Workers of America - Legal Department, District 20), Castlewood, Virginia, for claimant.

Timothy Gresham (Penn, Stuart, Eskridge & Jones, P.S.C.), Abingdon, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-1491) of Administrative Law Judge Daniel A. Sarno, Jr., denying benefits in the 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, and the parties stipulated to, forty-four years of coal mine employment. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 2. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis and death due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.205(c). Accordingly, benefits were denied. On appeal, claimant argues that the administrative law judge erred in not finding the existence of pneumoconiosis and death due to pneumoconiosis established at Sections 718.202(a) and 718.205(c). Claimant also requests that the Board take judicial notice of Dr. Robinette's qualifications. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he would not participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with 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).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 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 the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205, 718.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The United States Court of Appeals for the Fourth Circuit, within whose appellate jurisdiction this case arises, has held in *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1993), that any condition that actually hastens the miner's death is a substantially contributing cause of death for purposes of Section 718.205(c).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. The administrative law judge, in the instant case, properly determined that the evidence of record was insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c) as Drs. Branscomb, Fino, Castle, and Ranavaya, concluded that the miner's death was not due to pneumoconiosis and there was no contrary medical evidence in the record. *Shuff, supra*. Moreover, contrary to claimant's argument, the death certificate listing chronic obstructive pulmonary disease as a cause of

death is not sufficient to establish death due to pneumoconiosis without a finding that the chronic obstructive pulmonary disease arose out of coal mine employment. *See* 20 C.F.R. §718.201; *Boyd, supra*. Likewise, Dr. Robinette's opinion is not sufficient to establish death due to pneumoconiosis as he did not address the cause of death. Director's Exhibits 9, 11, 13; Employer's Exhibits 28-31; Decision and Order at 5.¹ Consequently, we affirm the administrative law judge's denial in this survivor's claim as it is supported by substantial evidence and is in accordance with law. *Shuff, supra*.

Inasmuch as claimant has failed to establish that the miner's death was due to pneumoconiosis, entitlement in this survivor's claim is precluded. 20 C.F.R. §718.205(c).

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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

¹ We need not reach claimant's argument concerning Dr. Robinette's qualifications.