

BRB No. 00-0589 BLA

BETTY JO WEBBER)	
(Widow of ROBERT WEBBER))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BECKLEY COAL MINING COMPANY,)	DATE ISSUED:
ITMANN COAL COMPANY)	
)	
Employers)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Mollie W. Neal,
Administrative Law Judge, United States Department of Labor.

Betty Jo. Webber, Pineville, West Virginia, *pro se*.

Sarah M. Hurley (Judith E. Kramer, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant, widow of the deceased miner, appeals, without the assistance of counsel, the Decision and Order (99-BLA-0702) of Administrative Law Judge Mollie W. Neal 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).¹ The administrative law judge credited the miner with nineteen years and five months of qualifying coal mine employment, determined that liability for any payment of benefits should be transferred to the Black Lung Disability Trust Fund, and adjudicated this claim, filed on December 18, 1997, pursuant to the provisions at 20 C.F.R. Part 718 (2000). The administrative law judge found the evidence insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2000) or death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) (2000). Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on February 21, 2001, to which both claimant and the Director have responded.² Based on the briefs submitted by the parties, and our

¹The 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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

²The Director's brief, dated March 7, 2001, asserted that the regulations at issue in the lawsuit do not affect the outcome of this case. In a letter dated February 27, 2001, claimant merely requested that the Board proceed, as she was unrepresented by counsel, believed the

review, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, the Board will proceed to adjudicate the merits of this appeal.

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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

evidence supported her claim, and felt that “these new provisions will favor my claim.”

Benefits are payable on a survivor's claim filed on or after January 1, 1982, only where the miner's death was due to pneumoconiosis, where pneumoconiosis was a substantially contributing cause of death, where death was caused by complications of pneumoconiosis, or where complicated pneumoconiosis is established, and the evidence establishes the existence of pneumoconiosis arising out of coal mine employment.³ See 20 C.F.R. §§718.1, 718.202(a), 718.203, 718.205(c)(1)-(3) (2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied, sub nom. Cedar Coal Co. v. Shuff*, 506 U.S. 1050 (1993); *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).

Initially, based on the facts of the instant case, we hold that there was a valid waiver of claimant's right to be represented by an attorney, see 20 C.F.R. §725.362(b) (2000), and that the administrative law judge provided claimant with a full and fair hearing. See *Shapell v. Director, OWCP*, 7 BLR 1-304 (1984); Decision and Order at 2; Hearing Transcript at 4-7.

Turning to the merits, after consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence, consistent with applicable law, and must be affirmed. The administrative law judge accurately reviewed the evidence of record and determined that the record was devoid of a medical opinion that the miner's death was hastened in any way by pneumoconiosis, whereas Drs. Hansbarger, Naeye, Bush, Kleinerman, Gaziano, Fino, Zaldivar, and Castle affirmatively opined that the miner's death was not caused, contributed to and/or hastened by pneumoconiosis but was due solely to complications of atherosclerotic coronary artery disease. Decision and Order at 9-17, 19. The administrative law judge's finding that the evidence was insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c) (2000) is supported by substantial evidence, and thus is affirmed. See *Shuff, supra*. Consequently, we affirm the administrative law judge's denial of benefits, and we need not reach the remaining issues of the existence of pneumoconiosis and its etiology.

³This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner was employed in the coal mine industry in the State of West Virginia. See Director's Exhibit 2; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

J. DAVITT McATEER
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge