

BRB No. 02-0585 BLA

MILDRED SKEENS	)	
(Widow of RALPH A. SKEENS)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
C.S. & S. COAL COMPANY	)	
	)	
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 Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Mildred Skeens, Grundy, Virginia, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: SMITH, McGRANERY and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (2002-BLA-18) of Administrative Law Judge Linda S. Chapman 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).<sup>1</sup> This case is before the Board for the fifth time. In this petition for modification, the administrative law judge found that

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<sup>1</sup>The 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 20 C.F.R. Parts 718, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

there was no mistake in fact in the prior determination that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).<sup>2</sup> See 20 C.F.R. §725.310. Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the Decision and Order Denying Modification of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel,<sup>3</sup> the Board considers the issue raised to be whether the Decision and Order below is supported by

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<sup>2</sup>Claimant is Mildred Skeens, surviving spouse of the miner, Ralph Skeens. The miner died on September 1, 1981. Director's Exhibit 11. Claimant filed her application for survivor's benefits on December 16, 1981. Director's Exhibit 1. The miner's claim filed on June 20, 1973, has been finally denied and is not at issue herein. Director's Exhibit 135.

In its most recent Decision and Order, the Board affirmed the administrative law judge's Decision and Order Denying Modification. *Skeens v. C.S. & S. Coal Company*, BRB No. 99-1161 BLA (Aug. 21, 2000)(unpub.). On June 4, 2001, claimant submitted additional evidence and requested modification of the survivor's claim. Director's Exhibit 126.

<sup>3</sup>Ron Carson, 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, but Mr. Carson is not representing claimant on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

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).

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment, and that the miner's death was due to pneumoconiosis, or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. See 20 C.F.R. §§718.201, 718.202(a), 718.203, 718.205(c)(2000); *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). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied* 113 S.Ct. 969 (1993).<sup>4</sup>

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's determination that the newly submitted evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis is supported by substantial evidence and that no reversible error is contained therein. The record indicates that the only evidence submitted in support of claimant's most recent petition for modification consisted of Dr. Alexander's February 28, 2001, positive interpretation of an x-ray taken on August 8, 1975, a statement of Dr. Alexander's qualifications, and Dr. Burnett's negative interpretation of the same x-ray. Director's Exhibits 126, 128. Employer submitted a report by Dr. Fino, dated February 4, 2001, which indicates that the miner's "death was a sudden cardiac event which was unrelated to the inhalation of coal mine dust." Employer's Exhibit 1.

Pursuant to Section 718.205(c), the administrative law judge noted that the existence of pneumoconiosis had previously been established and that the two new x-ray readings submitted by claimant would be insufficient to establish whether the miner's death was due, at least in part, to pneumoconiosis. Decision and Order Denying Modification at 5. The administrative law judge also reviewed the previously submitted evidence of record and found "no mistake of fact in Administrative Law Judge Sutton's determination that the evidence was not sufficient to establish that pneumoconiosis caused or contributed to Mr.

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<sup>4</sup>Since the miner's last coal mine employment took place in the Commonwealth of Virginia, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. Director's Exhibit 2; see *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Skeen's death," and benefits were denied.<sup>5</sup> Decision and Order Denying Modification at 5; 20 C.F.R. §§718.205(c), 725.310.

Since claimant has failed to introduce evidence in support of her modification request which could satisfy her affirmative burden of proof at Section 718.205(c) and the administrative law judge has reviewed all of the evidence of record and found that there is no mistake in a determination of fact, we hold that substantial evidence supports the administrative law judge's determination that claimant has not established that the miner's death was due to pneumoconiosis. *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993); *Shuff*, *supra*; *Wojtowicz*, *supra*.

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

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

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<sup>5</sup>The administrative law judge correctly found that the sole ground for modification of a survivor's claim is whether there was a mistake in a determination of fact in the prior denial, since a change in the miner's condition is not possible. Decision and Order Denying Modification at 3; *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

PETER A. GABAUER, Jr.  
Administrative Appeals Judge