

BRB No. 03-0535 BLA

EULAH JEAN BAKER)	
(Widow of COSSIE C. BAKER))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 03/17/2004
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Eulah Jean Baker, Partlow, Virginia, *pro se*.

Michael J. Rutledge (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

BEFORE: DOLDER, Chief Administrative Appeals Judge, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appears without the assistance of counsel and appeals the Decision and Order Denying Benefits (2002-BLA-00332) of Administrative Law Judge Jeffrey Tureck with respect to 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 considered the evidence of record relevant to the cause of the miner's death and determined that it was insufficient to establish that

¹ Claimant is Eulah Jean Baker, the surviving spouse of the miner, Cossie C. Baker. Mr. Baker died on August 8, 1993. Director's Exhibit 7. Claimant filed an application for survivor's benefits on October 20, 2000. Director's Exhibit 1.

pneumoconiosis caused, contributed to, or hastened the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

Claimant argues generally on appeal that the administrative law judge erred in failing to find that pneumoconiosis played a role in the miner's demise. The Director, Office of Workers' Compensation Programs (the Director), has responded and urges affirmance of the denial of benefits.²

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 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits in this claim, claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). For survivor's claims filed on or after January 1, 1982, the miner's death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304 is applicable. 20 C.F.R. §718.205(c)(1)-(3).³ Pneumoconiosis is a substantially contributing cause of death if it hastened the

² The administrative law judge's finding that the present case does not involve a request for modification of the district director's initial denial of the survivor's claim is affirmed, as it is not adverse to claimant and has not been challenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

³ 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, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

miner's death. 20 C.F.R. §718.205(c)(5); *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).⁴

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 Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error. The record reflects that the miner suffered a heart attack and was admitted to the Veterans Administration Hospital in Richmond, Virginia, on August 4, 1993. The miner died on August 8, 1993. Director's Exhibits 7, 14. The evidence in the record in which the cause of the miner's death is identified consists of a "death summary" and the death certificate, both of which were prepared by Dr. Moss, a physician who attended the miner in the hospital. Dr. Moss stated in the "death summary" that the cause of the miner's death was "cardiac failure secondary to extension of acute myocardial infarction." Director's Exhibit 7. On the death certificate, Dr. Moss identified asystole due to myocardial infarction as the cause of the miner's death. The doctor identified chronic obstructive lung disease (COLD) as a significant condition contributing to, but not resulting in, the underlying cause of death. *Id.* In a progress note dated August 6, 1993, the attending cardiologist indicated that the miner had heart valve disease and that his right coronary artery was completely blocked. Director's Exhibit 14. He also stated that surgery was a better treatment option than angioplasty and that "lung [disease] will be a major consideration." *Id.*

The administrative law judge reviewed this evidence and found that despite the references in the record to chronic obstructive pulmonary disease, bronchitis, and a history of black lung, there was "no suggestion that pneumoconiosis contributed to the miner's death." Decision and Order at 3. The administrative law judge discussed Dr. Moss's identification of chronic obstructive lung disease as a contributing cause of death on the death certificate, but concluded that "chronic obstructive lung disease is not coal workers' pneumoconiosis" and "there is nothing in the death certificate stating or even inferring that coal workers' pneumoconiosis contributed in any way to the miner's death."⁵ *Id.* The administrative law judge determined, therefore, that claimant failed to

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner's qualifying coal mine employment occurred in the Commonwealth of Virginia. Director's Exhibit 2; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

⁵ Although the administrative law judge referred to coal workers' pneumoconiosis, which is a form of clinical pneumoconiosis, *see* 20 C.F.R. §718.201(a)(1) and the issue is whether the miner died due to pneumoconiosis, clinical or legal, *see* 20 C.F.R. §718.202(a)(1) and (a)(2), this error is harmless because there is no credible evidence in the record establishing that the miner's death is related to his coal dust exposure. *See*

prove that pneumoconiosis played a role in the miner's death pursuant to Section 718.205(c).

The administrative law judge's finding that the evidence of record did not establish the required connection between pneumoconiosis and the miner's death is supported by substantial evidence and is, therefore, affirmed. *See Neeley*, 11 BLR 1-85. As the administrative law judge determined, Dr. Moss did not identify chronic obstructive lung disease as a cause of death in his "death summary." Decision and Order at 3; Director's Exhibit 14. In addition, the administrative law judge properly found that Dr. Moss's reference to chronic obstructive lung disease on the death certificate did not satisfy claimant's burden of proof under Section 718.205(c). Decision and Order at 3; Director's Exhibit 7. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that the mere identification on the death certificate of a lung disease that may meet the definition of pneumoconiosis set forth in 20 C.F.R. §718.201 (2000) is insufficient to establish causation. *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *see also U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999). Finally, it was not error for the administrative law judge to omit discussion of the attending cardiologist's progress note that "lung [disease] will be a major consideration" in choice of treatment options because it was unexplained. Director's Exhibit 14; *see Jarrell*, 187 F.3d 384, 21 BLR 2-639.

Johnson v. Jeddo-Highland Coal Co., 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.⁶

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

⁶ Claimant indicated in her letter requesting Board review of the Decision and Order Denying Benefits that not all of the miner's available medical records, including x-ray readings and physicians' opinions, were submitted to the Department of Labor in connection with her claim. Pursuant to 20 C.F.R. §725.310, claimant may file a request for modification of the denial of benefits and may submit evidence in support of her request.