

establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's finding that claimant did not establish that the miner's death was due to pneumoconiosis. The Director responds, urging affirmance of the administrative law judge's denial of benefits as supported by substantial evidence.

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 applicable 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 survivors' benefits, 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. §§718.3, 718.202, 718.203, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis 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 Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). 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); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992).

Pursuant to Section 718.205(c), the administrative law judge considered the miner's death certificate, a letter from Dr. Elsarrag, who was the miner's treating physician, and a report by Dr. Ranavaya. The death certificate, which was completed by Dr. Khanna, listed the cause of death as "COPD" due to "coal workers' pneumoconiosis," due to "cataract" and "CVA." Director's Exhibit 9. Since there were no explanations for these conclusions on the death certificate, the administrative law judge gave the death certificate no weight. Decision and Order at 2.

In a letter dictated on September 14, 2002, Dr. Elsarrag stated that the cause of the miner's death was "terminal respiratory failure secondary to advanced chronic obstructive lung disease that directly resulted from coal workers' pneumoconiosis." Claimant's Exhibit 1. In support of this conclusion, Dr. Elsarrag referred to a September 5, 2001 discharge summary from Welch Community Hospital. *Id.* The administrative law judge found that Dr. Elsarrag did not explain his conclusion. He additionally found that the September 5, 2001 discharge summary was not in the record, and found that in

any event, the summary predated the miner's death by a month-and-a-half and thus "could not possibly address the cause of the Miner's death." Decision and Order at 3. Further, the administrative law judge noted that Dr. Elsarrag stopped treating the miner before his death, did not become aware that the miner had died until sometime shortly before dictating the September 14, 2002 letter, and did not indicate that he saw any additional medical records. Consequently, the administrative law judge found that "it does not appear that [Dr. Elsarrag] was in any position to state why the Miner died." *Id.* Thus, the administrative law judge found that although Dr. Elsarrag's treatment records documented "numerous health problems," and Dr. Elsarrag listed those conditions in his letter, Dr. Elsarrag was not in a position to know what caused the miner's death:

Although [Dr. Elsarrag] may presume that the Miner died of the terminal COPD he had diagnosed, for all Dr. Elsarrag knows the miner may have died from a severe heart attack or stroke (both of which were more than remote possibilities given the Miner's history of numerous cardiac conditions and previous strokes), or some other non-pulmonary cause.

Decision and Order at 3.

Finally, the administrative law judge gave no weight to Dr. Ranavaya's opinion that the miner's death was unrelated to pneumoconiosis, because the opinion was unexplained. The administrative law judge denied benefits because he found that "[c]laimant provided insufficient evidence both of the cause of the Miner's death and the relationship between his death and pneumoconiosis." Decision and Order at 3.

Claimant argues that the administrative law judge erred in rejecting Dr. Elsarrag's opinion. Claimant contends that although Dr. Elsarrag stopped treating the miner, his opinion is based on his knowledge of his treatment of the miner and on subsequent medical records including the death certificate. Claimant further argues that the administrative law judge erred in rejecting "Dr. Elsarrag's opinion on the speculation that there might have been some other primary cause of death." Claimant's Brief at 4. The Director responds that the administrative law judge reasonably found that Dr. Elsarrag's opinion was not based on medical evidence or personal observations dating from the time of the miner's death.

We agree that the administrative law judge permissibly declined to credit Dr. Elsarrag's opinion. The administrative law judge accurately found that the only specific medical evidence Dr. Elsarrag cited in support of his opinion as to the cause of the miner's death was not in the record and, in any event, predated the miner's death by a month-and-a-half. Thus, the administrative law judge was within his discretion to find that Dr. Elsarrag was not in a position to credibly address the cause of the miner's death

or whether pneumoconiosis contributed to death. *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-263 (4th Cir. 2000); *United States Steel Mining Co. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999). Additionally, the administrative law judge permissibly found that Dr. Elsarrag did not explain his conclusions. *See 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). We therefore reject claimant's allegations of error. Additionally, since the administrative law judge permissibly discredited the death certificate because Dr. Khanna did not provide a basis for his conclusions, the administrative law judge reasonably found the evidence insufficient to establish that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c); *Sparks*, 213 F.3d at 192, 22 BLR at 2-263; *Addison v. Director, OWCP*, 11 BLR 1-68, 1-70 (1988). Therefore, we affirm the administrative law judge's finding pursuant to Section 718.205(c).

Because claimant did not establish that the miner's death was due to pneumoconiosis, a necessary element of entitlement in a survivor's claim, we affirm the denial of benefits. *See* 20 C.F.R. §718.205(a)(3),(c).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge