

BRB No. 05-0884 BLA

ETHEL D. ECKMAN	)	
(Widow of JOHN H. ECKMAN)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MARMON COAL COMPANY	)	
	)	
and	)	
	)	
INTERNATIONAL BUSINESS & MERCANTILE REASSURANCE COMPANY	)	DATE ISSUED: 03/28/2006
	)	
Employer/Carrier- Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Daniel L. Leland,  
Administrative Law Judge, United States Department of Labor.

Ethel D. Eckman, Schellsburg, Pennsylvania, *pro se*.

George H. Thompson, (Thompson, Calkins & Sutter), Pittsburgh,  
Pennsylvania, for employer.

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

PER CURIAM:

Claimant,<sup>1</sup> without the assistance of counsel, appeals the Decision and Order (03-BLA-6692) of Administrative Law Judge Daniel L. Leland 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). The administrative law judge credited the miner with ten years and six months of coal mine employment.<sup>2</sup> The administrative law judge found that claimant did not prove 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 generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs has declined to file a substantive response in 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. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §718.205(a)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes 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. 20 C.F.R. §718.205(c)(1)-(c)(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); *Lukosevicz v. Director, OWCP*, 888

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<sup>1</sup> Claimant is Ethel D. Eckman, the widow of the miner John H. Eckman, who died on May 2, 2002. Decision and Order at 2; Director's Exhibits 3, 11, 27.

<sup>2</sup> The record indicates that the miner's last coal mine employment occurred in Pennsylvania. Director's Exhibits 1, 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

F.2d 1001, 13 BLR 2-100 (3d Cir. 1989). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to Section 718.205(c), the administrative law judge considered a death certificate, a death notification form, and two medical reports addressing the cause of the miner's death. The miner's death certificate listed the immediate cause of his death as a cerebral vascular accident. Decision and Order at 2; Director's Exhibits 11, 27. No other causes or contributing conditions were listed. The death certificate indicated further that no autopsy was performed. An End Stage Renal Disease Death Notification form indicated that the primary cause of death was cerebrovascular accident including intracranial hemorrhage, and that there were no secondary causes. Decision and Order at 3; Employer's Exhibit 1. Dr. Slick, who treated the miner from 1985 to 2001, opined that the miner had an occupational lung disease due to coal mine dust which was severe at the time of the miner's death. Decision and Order at 3; Director's Exhibit 34; Claimant's Exhibit 1. Dr. Slick stated that "[t]his condition contribu[t]ed to his death." Director's Exhibit 34. By contrast, Dr. Fino reviewed the miner's medical records and concluded that the miner died due to end-stage renal disease and that pneumoconiosis, if present, did not cause, contribute to, or hasten his death in any way. Decision and Order at 3; Director's Exhibit 40. Based on all of this evidence, the administrative law judge found that claimant did not establish that the miner's death was due to pneumoconiosis.

Upon review, we conclude that substantial evidence supports the administrative law judge's finding, which is in accordance with law. *McFall*, 12 BLR at 1-177. Specifically, the administrative law judge was within his discretion to find that although Dr. Slick treated the miner for a variety of conditions, there was no indication that Dr. Slick possessed any expertise in pulmonary disease, *see Dillon v. Peabody Coal Co.*, 11 BLR 1-113, 1-114 (1988), and he permissibly found that Dr. Slick's opinion was not well reasoned since he "merely asserts that the decedent's occupational lung disease contributed to his death but provides no basis for this conclusion." Decision and Order at 4; *see* 20 C.F.R. §718.104(d)(5); *Lango v. Director, OWCP*, 104 F.3d 573, 577, 21 BLR 2-12, 2-20-21 (3d Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). Substantial evidence supports the administrative law judge's finding, and the Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge. *Mays v. Piney Mountain Coal Co.*, 21 BLR 1-59, 1-64 (1997)(Dolder, J., concurring and dissenting). Since the administrative law judge permissibly discounted the only medical evidence supportive

of claimant's burden of proof, we affirm his finding that claimant did not establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c).

Because claimant did not establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), a necessary element of entitlement under 20 C.F.R. Part 718 in a survivor's claim, benefits are precluded. *See* 20 C.F.R. §718.205(a)(3); *Trumbo*, 17 BLR at 1-87-88. Consequently, we must affirm the administrative law judge's denial of benefits as it is supported by substantial evidence and in accordance with law. *McFall*, 12 BLR at 1-177.

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge