

BRB No. 07-0528 BLA

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|-------------------------------|---|-------------------------|
| L.T.                          | ) |                         |
| (Widow of C.T.)               | ) |                         |
|                               | ) |                         |
| Claimant-Petitioner           | ) |                         |
|                               | ) |                         |
| v.                            | ) |                         |
|                               | ) |                         |
| CH & S COAL COMPANY,          | ) | DATE ISSUED: 03/14/2008 |
| INCORPORATED                  | ) |                         |
|                               | ) |                         |
| 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 – Denial of Benefits of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

L.T., Birchleaf, Virginia, *pro se*.

H. Ashby Dickerson (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant,<sup>1</sup> without the assistance of counsel,<sup>2</sup> appeals the Decision and Order – Denial of Benefits (2005-BLA-5752) of Administrative Law Judge Edward Terhune Miller (the administrative law judge) 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 adopted the employer’s stipulation to the miner’s thirty-five years of qualifying coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b). However, the administrative law judge found the evidence insufficient to establish that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge’s denial of benefits. Employer responds urging affirmance, and 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, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 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.<sup>3</sup> 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).

In order to establish entitlement to survivor’s benefits in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner’s death was due to pneumoconiosis. Death

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<sup>1</sup> Claimant, the widow of the miner, filed a survivor’s claim on February 26, 2004. Director’s Exhibit 30.

<sup>2</sup> Brenda Yates, a benefits counselor with Stone Mountain Health Services of Oakwood, Virginia, filed an appeal on behalf of claimant, but is not representing her on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

<sup>3</sup> The law of the United States Court of Appeals for the Fourth Circuit is applicable, as the miner was employed in the coal mine industry in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director’s Exhibits 3-4.

due to pneumoconiosis may be established by showing that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 718.304; *see 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); *see also 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), *cert. denied*, 506 U.S. 1050 (1993).

In the present case, the administrative law judge rationally found that claimant did not meet her burden of establishing that the miner's death was due to pneumoconiosis at Section 718.205(c). Decision and Order at 9; *see Mays*, 176 F.3d at 755, 21 BLR at 2-592; *Shuff*, 967 F.2d at 979, 16 BLR at 2-92. In so finding, the administrative law judge noted that the miner's death certificate, signed by Dr. Sutherland, listed the cause of death as cardiopulmonary arrest due to [Bronchiectasis], and heart murmur/ASVD. Director's Exhibit 7; Decision and Order at 5. Although "Pneumoconiosis/Hyperlipidemia" was listed under other significant conditions contributing to death, the administrative law judge found that, absent a rationale or supporting evidence, the death certificate alone was insufficient to establish death due to pneumoconiosis at Section 718.205(c). *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000). Moreover, the administrative law judge properly found that the only remaining evidence of record addressing the cause of the miner's death consisted of the opinions of Drs. Fino and Naeye, neither of whom found pneumoconiosis to have caused, contributed to or hastened the miner's death. Decision and Order at 9; *see Trumbo*, 17 BLR at 1-87-88; *Neeley*, 11 BLR at 1-86; *Boyd*, 11 BLR at 1-40-41; *see also Mays*, 176 F. 3d at 755, 21 BLR at 2-592; *Shuff*, 967 F.2d at 979, 16 BLR at 2-92.

Specifically, the administrative law judge noted that although Dr. Fino diagnosed simple pneumoconiosis in his report dated October 18, 2004, after reviewing the evidence, he found that there was no valid objective medical evidence to support a finding that coal workers' pneumoconiosis caused, contributed to, or hastened the miner's death. Employer's Exhibit 16; Decision and Order at 5. Further, the administrative law judge noted that after having the opportunity to review additional evidence, Dr. Fino issued a second report dated March 11, 2005, in which he reiterated his previous findings and opined that the miner's death was due to acute cardiac arrest. Employer's Exhibit 6; Decision and Order at 5.

The administrative law judge noted that Dr. Naeye's August 25, 2005 report was based on his review of the relevant medical evidence of record, and biopsy tissue. The

administrative law judge found that Dr. Naeye's review led him to believe that there was no certain evidence to show that the miner even had pneumoconiosis. Employer's Exhibit 23; Decision and Order at 6. The administrative law judge further noted that Dr. Naeye explained that although the biopsy tissue he reviewed contained heavy deposits of black pigment he found that the presence of the pigment without "significant numbers of accompanying very tiny toxic birefringent crystals or fibrosis" was an indication that if any coal workers' pneumoconiosis was present in the miner's lungs when he died, it was too mild to have caused any disability or to have contributed to his death. Employer's Exhibit 23.

The administrative law judge's findings pursuant to 20 C.F.R. §718.205(c) are supported by substantial evidence and are affirmed. Consequently, we affirm the administrative law judge's denial of survivor's benefits. *Id.*

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge