

BRB Nos. 08-0423 BLA and
08-0423 BLA-A

R.T.)	
(Widow of M.T.))	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
JOC COAL MINING INCORPORATED)	
)	DATE ISSUED: 03/11/2009
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	
)	
Employer/Carrier-Respondents)	
Cross-Petitioners)	
)	
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 Alice M. Craft,
Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant¹ appeals and employer² cross-appeals the Decision and Order Denying Benefits (2006-BLA-05598) of Administrative Law Judge Alice M. Craft issued 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).³ The administrative law judge determined that employer was the responsible operator and adjudicated this case pursuant to the regulations at 20 C.F.R. Part 718. The administrative law judge credited the miner with 11.12 years of coal mine employment and determined that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203. However, the administrative law judge further determined 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). Accordingly, benefits were denied.

Claimant appeals, asserting that the administrative law judge erred in failing to find that pneumoconiosis hastened the miner's death. Employer responds, urging affirmance of the denial of benefits. Employer has also filed a cross-appeal, asserting that the administrative law judge erred in designating employer as the responsible operator and that liability for benefits should transfer to the Black Lung Disability Trust Fund. Although employer contends that the administrative law judge erred in crediting Dr. Simpao's opinion that the miner had pneumoconiosis pursuant to Section 718.202(a)(4), employer asserts that this error is harmless in view the administrative law judge's finding that the miner's death was not hastened by pneumoconiosis pursuant to Section 718.205(c). The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he takes no position on the merits of claimant's appeal.⁴

¹ Claimant, R.T., is the widow of the miner, M.T., who died on July 25, 2004. Director's Exhibit 11.

² JOC Mining Company and Old Republic Insurance Company are collectively referred to as "employer" in this decision.

³ Claimant filed her survivor's claim on September 7, 2004. Director's Exhibit 2. The district director issued a Proposed Decision and Order denying benefits on December 20, 2005. Director's Exhibit 36. Claimant requested a hearing, which was held on April 14, 2006. Thereafter, the administrative law judge issued her Decision and Order Denying Benefits on January 29, 2008, which is the subject of this appeal.

⁴ We affirm, as unchallenged by the parties on appeal, the administrative law judge's findings of 11.12 years of coal mine employment and that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20

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.⁵ 33 U.S.C. §921(b)(3), as incorporated 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 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. §§718.201, 718.202, 718.203, 718.205(a)(1)-(3); *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). 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).

For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that 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 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). 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); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993).

In this case, the administrative law judge determined that there is no evidence in the record to support a finding that the miner's death was caused, contributed to or hastened by pneumoconiosis.⁶ Claimant, however, contends that since Dr. Simpao

C.F.R. §§718.202(a)(1), 718.203. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner's coal mine employment was in Kentucky. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 5.

⁶ The administrative law judge correctly noted that "the only evidence in the record that the condition of the [m]iner's lungs contributed to his death are occasional diagnoses of [chronic obstructive pulmonary disease] in the [m]iner's early (pre-2000) treatment records, and the diagnosis of coal workers' pneumoconiosis by Dr. Simpao." Decision and Order at 15; Director's Exhibit 8. The miner's death certificate listed acute myocardial infarction due to coronary artery disease as the immediate cause of the miner's death, and made no mention of pneumoconiosis. Director's Exhibit 11.

diagnosed a moderate pulmonary impairment, “it can be reasonably concluded that the miner did suffer from coal workers’ pneumoconiosis and that said disease did contribute, at least, in part, to the miner’s death.” Claimant’s Brief at 8-9.

We reject this contention. An administrative law judge’s findings “must be based solely on the medical evidence contained in the record.” *White v. New White Coal Co.*, 23 BLR 1-1, 1-7 n.8 (2004). The administrative law judge correctly noted that Dr. Simpao did not address the cause of the miner’s death, while Drs. Rosenberg and Vuskovich specifically opined that the miner’s death from cardiac arrest was unrelated to his coal dust exposure. Decision and Order at 15. Because claimant did not present evidence to satisfy her burden of proving that the miner’s death was hastened by pneumoconiosis, we affirm the administrative law judge’s finding at 20 C.F.R. §718.205(c) and the denial of survivor benefits. See *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27; *Oggero v. Director*, OWCP, 7 BLR 1-860 (1985).⁷

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

Furthermore, Dr. Rosenberg opined that the miner’s death from cardiac arrest was unrelated to his coal dust exposure, and Dr. Vuskovich similarly opined that the miner’s death was not due to either clinical or legal pneumoconiosis. Employer’s Exhibits 1, 2.

⁷ Because we affirm the administrative law judge’s denial of benefits, it is not necessary that we address employer’s argument that the administrative law judge erred in finding that it is the responsible operator.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge