

BRB No. 99-0886 BLA

JANICE S. WARD)	
(Widow of STANFORD L. WARD))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
RAIDER MINING, INCORPORATED)	DATE ISSUED:
)	
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 of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Janice S. Ward, Grundy, Virginia, *pro se*.

Steven H. Theisen (Midkiff & Hiner, PC.), Richmond, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (1998-BLA-1238) of Administrative Law Judge Richard T. Stansell-Gamm 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). Based on the filing date of the claim, the administrative law judge applied the regulations at 20 C.F.R. Part 718. The administrative law judge found that claimant established the existence of pneumoconiosis, and that claimant was entitled to the presumption that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §§718.202(a)(2), 718.203(b). The administrative law judge, however, found the evidence of record insufficient to establish that pneumoconiosis caused, contributed to or hastened the

miner's death at 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant generally challenges the findings of the administrative law judge that the miner's pneumoconiosis did not cause the miner's death. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond in this appeal.¹

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.² *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 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. 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).

¹ We affirm the finding of the administrative law judge on the designation of employer as the responsible operator, as it is unchallenged by employer. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, filed an appeal on behalf of claimant, but is not representing him on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment, that the miner's death was due to pneumoconiosis. Death due to pneumoconiosis may be established by showing that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that death was caused by complications of pneumoconiosis.³ See 20 C.F.R. §§718.205(c), 718.202(a), 718.203; *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), cert. denied 113 S.Ct. 969 (1993); *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). The United States Court of Appeals for the Fourth Circuit has held that any condition that hastens the miner's death is a substantially contributing cause of death for purposes of Section 718.205(c)(2). See *Shuff, supra*.

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 that there is no reversible error. Initially, the administrative law judge permissibly credited the miner with at least seventeen years of coal mine employment based on the miner's social security earnings record and employment certifications in the record.⁴ See *Niccoli v. Director, OWCP*, 6 BLR 1-910 (1984); *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986). We, therefore, affirm the findings of the administrative law judge on the length of coal mine employment.

The administrative law judge properly relied on the parties' stipulation at the hearing that the miner had pneumoconiosis at the time of his death when finding that claimant met her burden of proving the existence of pneumoconiosis at Section 718.202(a)(2). See *Richardson v. Director, OWCP*, 94 F.3d 164, 21 BLR 2-373 (4th Cir. 1996); *Trumbo, supra*; *Neeley, supra*. The administrative law judge also properly found claimant entitled to the presumption that the miner's pneumoconiosis arose out of his coal mine employment based on the determination that the miner worked at least seventeen years in coal mining. See *Boyd, supra*; 20 C.F.R. §718.203(b); Decision and Order at 5. Furthermore, the

³ Since the miner's last coal mine employment took place in Virginia, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit, the jurisdiction where the miner last worked. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

⁴ Because the newer Social Security earnings record reflects wages earned for a full year, and not quarterly, the administrative law judge acted within his discretion when he averaged the miner's yearly wages to get a quarterly average wage. See Decision and Order at 5, fn 9; see *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986).

administrative law judge acted within his discretion when he concluded that the medical evidence of record was insufficient to rebut this presumption. *Id.* We, therefore, affirm the finding of the administrative law judge that claimant established the existence of pneumoconiosis arising out of coal mine employment as it is supported by substantial evidence.

At Section 718.205(c), claimant bears the burden of proving that pneumoconiosis caused, contributed to or hastened the miner's death. *Shuff, supra; Trumbo, supra; Neeley, supra.* In finding that claimant failed to meet her burden of proof, the administrative law judge properly found that since the record did not contain any evidence of complicated pneumoconiosis, claimant was not entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis. *See Shuff, supra; 20 C.F.R. §§718.205(c)(3), 718.304; Decision and Order at 9-10.* The administrative law judge also properly concluded that the miner's death was not caused by his pneumoconiosis as neither the autopsy prosector nor the reviewing physicians attributed the miner's death directly to his pneumoconiosis. *See Shuff, supra; 20 C.F.R. §718.205(c)(1); Director's Exhibits 16, 18, 19, 35, 36; Employer's Exhibits 1-5.* Concerning the issue of whether pneumoconiosis was a substantially contributing cause or hastened the miner's death, the administrative law judge acted within his discretion when he assigned little probative value to Dr. Sutherland's assessment on the death certificate that the miner's death was a consequence of his pneumoconiosis as the administrative law judge permissibly found that these comments were not a reasoned medical opinion, and thus, insufficient to meet claimant's burden of proof. *See Shuff, supra; Trumbo, supra; Carson v. Westmoreland Coal Co., 19 BLR 1-18 (1994); see also Addison v. Director, OWCP, 11 BLR 1-68 (1988).* Likewise, the administrative law judge properly concluded that the autopsy report of Dr. Abrenio and the medical opinion of Dr. Kahn did not contain any evidence or reasoning linking the miner's death to pneumoconiosis, and were, thus, not probative on the issue of pneumoconiosis contributing or hastening the miner's death. *See Shuff, supra; Director's Exhibits 18, 44; Employer's Exhibits 1, 5.* Additionally, the administrative law judge permissibly found the report of Dr. Caffery insufficient to meet claimant's burden of proof as the physician specifically determined that pneumoconiosis was not a significant contributing factor in the miner's death and did not discuss whether pneumoconiosis hastened the miner's death. *See Shuff, supra; Director's Exhibit 36; Employer's Exhibit 3.* Finally, the administrative law judge did not err in according determinative weight to the medical opinions of Drs. Naeye and Tomashefski, each of whom concluded that the miner's pneumoconiosis played no role in his death, as he found these reports well-documented and well-reasoned. *See Carson, supra; Fields, supra.* Thus, the administrative law judge properly concluded that the medical opinion evidence of record was insufficient to meet claimant's burden of proof at Section 718.205(c). *See Shuff, supra; Trumbo, supra; Neeley, supra; Boyd, supra.* We, therefore, affirm the finding of the administrative law judge at Section 718.205(c) as it is supported by substantial evidence and is in accordance with law.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge