

BRB No. 01-0809 BLA

CLARSIE M. ANDERSON )  
(Widow of HOWARD ANDERSON) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 RIVER HURRICANE COAL COMPANY, )  
 INCORPORATED )  
 )  
 and )  
 )  
 UNITED AFFILIATES CORPORATION )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 DIRECTOR, OFFICE OF WORKERS' ) DATE ISSUED: \_\_\_\_\_  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order of Joseph E. Kane, Administrative Law Judge,  
United States Department of Labor.

Clarsie M. Anderson, Kimper, Kentucky, *pro se*.

Lois A. Kitts (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant,<sup>1</sup> without the assistance of counsel,<sup>2</sup> appeals the Decision and Order (99-

BLA-1371) of Administrative Law Judge Joseph E. Kane 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).<sup>3</sup> Initially, the administrative law judge credited the miner with at least eleven years of coal mine employment pursuant to the parties' stipulation, Hearing Transcript at 8. Decision and Order at 3. Applying the regulations pursuant to 20 C.F.R. Part 718,<sup>4</sup> the administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) (2000). Decision and Order at 12. The administrative law judge also found that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) (2000). *Id.* at 12-13. Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in failing to find that the miner's death was due to pneumoconiosis. Employer responds, urging affirmance of the denial of benefits.<sup>5</sup> The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.<sup>6</sup>

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Inasmuch as the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).<sup>7</sup> See 20 C.F.R. §718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. See 20 C.F.R. §718.205(c)(5); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

In considering the relevant evidence pursuant to Section 718.205(c) (2000), the administrative law judge first noted that while Dr. Sundaram opined that the miner's death was due to pneumoconiosis, this physician relied heavily on an invalid pulmonary function study and on his finding of pulmonary disability, which the administrative law judge found is not supported by the evidence of record.<sup>8</sup> Decision and Order at 12. The administrative law judge next stated that Dr. Dennis, the autopsy prosector, did not list pneumoconiosis as a cause of death, but found the miner's death to be due to a cardiac arrhythmia. *Id.* Further, the administrative law judge found that the coroner's listing of pneumoconiosis on the miner's death certificate did not constitute a reasoned opinion.<sup>9</sup> *Id.* at 12-13. After noting that Drs. Perper, Kleinerman, Naeye, Broudy, and Fino all found that pneumoconiosis played

no role in the miner's death, the administrative law judge concluded that claimant failed to establish that the miner's death was due to pneumoconiosis. *Id.* at 13.

The administrative law judge permissibly found, within his discretion, that the opinions linking the miner's death to pneumoconiosis, namely the opinion of Dr. Sundaram and the death certificate, were not adequately documented or reasoned, *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Inasmuch as the Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge, where the administrative law judge's findings are supported by substantial evidence and in accordance with the law, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis.<sup>10</sup> *See* 20 C.F.R. §718.205(c)(2), (c)(5); *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Neeley, supra*.

Because we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis, *see Brown, supra*; *see also Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989), an essential element of entitlement in a survivor's claim, we also affirm his denial of survivor's benefits under 20 C.F.R. Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*); *see also Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

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

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge

---

PETER A. GABAUER, Jr.  
Administrative Appeals Judge