

BRB No. 02-0556 BLA

CHRISTINE HARRIS)	
(Widow of DALLAS B. HARRIS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Christine Harris, Honaker, Virginia, *pro se*.

Sarah M. Hurley (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order Denying Benefits (2001-BLA-00997) of Administrative Law Judge Jeffrey Tureck rendered 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).

¹ Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

² The miner died on August 5, 1999, and claimant filed her application for survivor's benefits on October 11, 2000. Director's Exhibit 1. The district director denied benefits and claimant requested a hearing, which was scheduled for January 18, 2002. Director's Exhibits 42, 43, 45, 46. However, prior to the scheduled hearing, the parties waived their right to a hearing and requested a decision on the record. Order Canceling Hearing at 1; see *Pukas v. Schuylkill Contracting Co.*, 22 BLR 1-69, 1-72 (2000).

In the ensuing Decision and Order Denying Benefits, the administrative law judge found that the medical evidence did not establish that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

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 supported by substantial evidence, is rational, and is 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).

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 (1993). 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. 20 C.F.R. §718.205(c)(2), (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); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 979-80, 16 BLR 2-90, 2-92-93 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993). Failure to

² The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

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).

Review of the record indicates that the miner died on August 5, 1999, following injuries sustained in a motor vehicle accident. Director's Exhibit 8. The miner's death certificate listed the immediate cause of death as "Blunt Chest Trauma with Cardiac Contusion." Director's Exhibit 4. No other causes or conditions were listed. *Id.* Dr. Segen conducted an autopsy limited to the chest and diagnosed multiple traumatic injuries to the chest wall, coal workers' pneumoconiosis, arteriosclerotic heart disease, and cardiomegaly. Director's Exhibit 5. The autopsy report prepared by Dr. Segen contained no discussion of the cause of death. *Id.* Dr. Crouch reviewed the autopsy report and lung tissue slides and diagnosed "very mild, simple coal workers' pneumoconiosis." Director's Exhibit 6. Dr. Crouch stated that the simple coal workers' pneumoconiosis was too mild to "have contributed to or otherwise hastened this patient's death secondary to a motor vehicle accident." *Id.*

Pursuant to 20 C.F.R. §718.205(c), the administrative law judge considered all of the relevant medical evidence and found that "there is no suggestion anywhere in the record that [the miner's] death was due, in any way, to anything other than the motor vehicle accident." Decision and Order Denying Benefits at 2. Noting that there were "no contrary opinions in the record," the administrative law judge found that "the miner's death was unrelated to coal workers' pneumoconiosis" *Id.*

Claimant bears the burden of proving that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(a)(3). As the administrative law judge found, the record contains no evidence linking the miner's death to pneumoconiosis. Substantial evidence supports the administrative law judge's finding that pneumoconiosis was not a substantially contributing cause of the miner's death. Accordingly, we affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.205(c).

Because claimant has failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), a necessary element of entitlement in a survivor's claim, we affirm the denial of benefits. See *Anderson, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge