

BRB No. 01-0278 BLA

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

Appeal of the Decision and Order of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Bertha Gipson, Richmond, Kentucky, *pro se*.

Edward Waldman (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals, without the assistance of counsel, the Decision and Order (00-BLA-0058) of Administrative Law Judge Donald W. Mosser denying benefits on a 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>2</sup> In this survivor's claim, the

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<sup>1</sup> Claimant, Bertha Gipson, is the surviving unmarried divorced spouse of Alex Gipson who died on August 8, 1993.

<sup>2</sup> 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

administrative law judge credited the miner with three and one-quarter years of coal mine employment. The administrative law judge next found the evidence of record insufficient to establish the existence of pneumoconiosis and insufficient to establish that the miner's death was due to pneumoconiosis. Accordingly, benefits were denied.

On appeal, claimant generally challenges the findings of the administrative law judge. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the Decision and Order as supported by substantial evidence.

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

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on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001).

evidence. *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).

To establish entitlement to survivor's benefits claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *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). For survivors' claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, 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 Section 718.304, is applicable. *See* 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 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).

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. The administrative law judge properly found that the miner's death was not due to pneumoconiosis because the record contained no evidence of complicated pneumoconiosis, the miner's death certificate lists respiratory arrest due to lung cancer as the cause of death, with no mention of pneumoconiosis, and Dr. Brashear, the physician, who attended the miner while he was in Hospice care, did not attribute the miner's death to pneumoconiosis or a respiratory impairment arising out of coal mine employment. Decision and Order at 9; Claimant's Exhibit 1; Director's Exhibit 16. Thus, because the record does not support a finding that the miner's death was due to pneumoconiosis, substantially contributed to by pneumoconiosis, or in any way hastened by pneumoconiosis, the administrative law judge properly found that claimant failed to establish entitlement, and we need not address the administrative law judge's findings regarding the existence of pneumoconiosis. *See* 20 C.F.R. §718.205(c).

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge