

BRB No. 99-0319 BLA

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

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

Virgie Rollins, McArthur, Ohio, *pro se*.

Jennifer U. Toth (Henry L. Solano, 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 BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (95-BLA-1667) of Administrative Law Judge Donald W. Mosser 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 date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. Pursuant to claimant's prior appeal the Board affirmed the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(1) and (2), but vacated the administrative law judge's finding that the evidence did not establish death due to pneumoconiosis at Section 718.205(c)(3) as the administrative law judge failed to consider Dr. Aycoth's x-ray reading of complicated pneumoconiosis, and remanded the case for consideration of that x-ray reading and

consideration under Section 718.205(c)(3). On remand, the administrative law judge concluded that the evidence of record was insufficient to establish entitlement to the irrebuttable presumption at 20 C.F.R. §718.304, and thus, insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(3). Accordingly, benefits were denied. On appeal, claimant generally contends that she is entitled to 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 Corp.*, 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 in a survivor's claim filed on or after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis caused or substantially contributed to the miner's death. *See* 20 C.F.R. §§718.1, 718.205, 718.201; *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

The Board remanded this case in its previous Decision and Order as the administrative law judge failed to consider Dr. Aycoth's x ray reading of complicated pneumoconiosis dated February 2, 1979. On remand, the administrative law judge found that he had previously overlooked Dr. Aycoth's x-ray reading of complicated pneumoconiosis. In considering the x-ray reading, on remand, however, the administrative law judge permissibly found the reading outweighed by a subsequent negative reading of the same x-ray by Dr. Saba, and by other subsequent x-rays which found either simple pneumoconiosis or no pneumoconiosis. Director's Exhibits 9-11; Decision and Order at 3; *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985). Thus, the administrative law judge's finding that the weight of the evidence failed to support a finding of complicated pneumoconiosis and is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(3) is affirmed. Consequently, we affirm the administrative law judge's denial in this survivor's claim as it is supported by substantial evidence and is in accordance with law. *Griffith, supra*; *Brown, supra*. Inasmuch as

claimant has failed to establish that the miner's death was due to pneumoconiosis, a requisite element of entitlement in a survivor's claim pursuant to Part 718, entitlement thereunder is precluded. *Brown, supra.*

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge