

BRB No. 99-0371 BLA

FRANCES E. WILLIAMS	)	
(Widow of TOMMY J. WILLIAMS, Sr.)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
T & S COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS'	)	
PNEUMOCONIOSIS FUND	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Survivor's Benefits of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Frances E. Williams, Oak Hill, West Virginia, *pro se*.

Stephen E. Crist (West Virginia Coal Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, widow of the miner, appeals, without the assistance of counsel, the Decision and Order Denying Survivor's Benefits (97-BLA-01973) of Administrative Law Judge

Daniel F. Sutton 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). The administrative law judge found, and the parties stipulated to, at least ten years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge concluded that the evidence of record was insufficient to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), and thus insufficient to establish a mistake in fact pursuant to 20 C.F.R. §725.310.<sup>1</sup> Accordingly, benefits were denied. On appeal, claimant generally contends that she is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate in this appeal.

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 miner's pneumoconiosis caused or substantially contributed to his death. *See* 20 C.F.R. §§718.1, 718.205, 718.201; *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). Moreover, the United States Court of Appeals for the Fourth Circuit, within whose appellate jurisdiction this case arises, has held in *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1993), that any condition that actually hastens the miner's death is a

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<sup>1</sup> Because we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis, *infra*, we will not address the administrative law judge's finding that collateral estoppel applies to bar the relitigation of the earlier finding in the miner's claim that the existence of pneumoconiosis was established. Decision and Order at 9.

substantially contributing cause of death.

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 administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. The administrative law judge, in the instant case, permissibly determined that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). The administrative law judge permissibly found Dr. Herr's opinion equivocal as he was unable to substantiate that pneumoconiosis hastened death, and Dr. Othman's opinion unreliable as he failed to review the record from the miner's last hospitalization when opining that pneumoconiosis "might" have been a cause of death. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985). Further, the administrative law judge properly found that as neither the death certificate nor any other medical reports attributed the miner's death to pneumoconiosis, claimant failed to carry her burden of establishing that the miner's death was due to pneumoconiosis. Consequently, we affirm the administrative law judge's finding in this survivor's claim as it is supported by substantial evidence and in accordance with law. *Trumbo, supra*; *Shuff, supra*. Further, inasmuch as the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), the administrative law judge properly found that claimant has failed to establish a mistake in fact, and thus modification has not been established pursuant to 20 C.F.R. §725.310. *See Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993). As claimant failed to establish that the miner's death was due to pneumoconiosis, entitlement in this survivor's claim is precluded.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge