

BRB No. 99-1311 BLA

EMMA RUTH WOOD ATHA)	
(Widow of LONZO ATHA))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
PEABODY COAL COMPANY)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Emma Ruth Wood Atha, Kimberly, West Virginia, *pro se*.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (99-BLA-0279) of Administrative Law Judge Edward Terhune Miller 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). The instant case involves a survivor's claim filed on June 3, 1998.² The administrative law judge found that claimant failed to establish that the miner's death

¹Claimant is the surviving spouse of the deceased miner who died on February 4, 1998. Director's Exhibit 10.

²The miner's claim, filed on March 17, 1983, was denied by the district director on May 7, 1984. Director's Exhibit 10. The record does not indicate that the miner took any further action with regard to this claim.

was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Neither employer nor the Director, Office of Workers' Compensation Programs, has filed a brief in response to claimant's *pro se* appeal.³

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. *See Mc Fall 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 supported by substantial evidence, are rational, and are consistent with applicable 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).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718 in a claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; *see 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). The United States Court of Appeals for the Fourth Circuit, wherein jurisdiction of this case lies, *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*), held in *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993), that pneumoconiosis will found to be a substantially contributing cause or factor in the miner's death where it is found to have actually hastened death.

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718. The administrative law judge properly found that the relevant medical evidence at Section 718.205(c) consists of hospital records reflecting the period of time immediately prior to the miner's death, the

³We affirm as unchallenged and not adverse to claimant the administrative law judge's finding of twenty -six and one-half years of coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3.

miner's death certificate signed by Dr. Lawton, and the medical opinions of Drs. Ranavaya and Fino. Decision and Order at 7; Director's Exhibit 10, 12, 15; Employer's Exhibit 1. The administrative law judge properly found that this evidence did not disclose any significant lung impairment or pneumoconiosis. *Id.* The administrative law judge properly found that there is no reference to pneumoconiosis or any lung impairment in the death summary prepared by Dr. Lawton and that the death certificate stated that the miner died of renal failure and associated gangrene of the toes. Decision and Order at 7; Director's Exhibit 10, 12. Renal failure is listed as a significant condition contributing to the miner's death. The administrative law judge further found that Drs. Ranavaya and Fino opined "categorically" that there was "no relation between pneumoconiosis and the miner's death." Decision and Order at 7; Director's Exhibit 15; Employer's Exhibit 1. *See Shuff, supra.* Thus, the administrative law judge properly found that the record does not contain any evidence supportive of a finding of death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), and we, therefore, affirm that finding.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge