

BRB No. 08-0203 BLA

G.S.)	
(Widow of J.C.S.))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
WESTMORELAND COAL COMPANY)	DATE ISSUED: 09/29/2008
)	
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 Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

G.S., Appalachia, Virginia, *pro se*.¹

Kathy L. Snyder (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

¹ Jerry Murphree, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, filed an appeal on behalf of claimant, but Mr. Murphree is not representing claimant on appeal. *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Claimant,² without the assistance of counsel, appeals the Decision and Order (07-BLA-5121) of Administrative Law Judge Linda S. Chapman (the administrative law judge) 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). The administrative law judge credited the miner with thirty-seven years of coal mine employment,³ and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge also found that the evidence did not establish that the miner's death 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. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.⁴

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal 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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

² Claimant is the widow of the miner, who died on November 14, 2005. Director's Exhibits 2, 8. Claimant filed her survivor's claim on January 25, 2006. Director's Exhibit 2.

³ The record indicates that the miner was employed in the coal mining industry in Virginia. Director's Exhibits 3, 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

⁴ Because the administrative law judge's length of coal mine employment finding and her finding that the evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a) are not adverse to this *pro se* claimant, and are not challenged on appeal, they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

To establish entitlement to survivor's benefits, 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.⁵ See 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). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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); see *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

At Section 718.205(c), the administrative law judge considered the death certificate completed by Dr. Ford, the autopsy reports of Drs. Colquitt and Naeye, and the reports of Drs. Ford, Hippensteel, and Rosenberg. In the death certificate, Dr. Ford listed acute pulmonary hemorrhage as the immediate cause of the miner's death. Director's Exhibit 8. Dr. Ford also listed lung cancer, coal mine dust exposure and asbestosis as underlying conditions leading to the immediate cause of the miner's death. *Id.* Further, Dr. Ford listed coronary artery disease and chronic obstructive pulmonary disease as significant conditions contributing to the miner's death. *Id.* In a November 17, 2005 surgical pathology report that was based on a post-mortem pneumonectomy of the miner's right lung, Dr. Colquitt diagnosed changes compatible with simple coal workers'

⁵ Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.
- (4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.
- (5) 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).

pneumoconiosis, centriacinar emphysematous change, focal pleural fibrous adhesions, and negative malignancy, but he did not render an opinion regarding the cause of the miner's death. Director's Exhibit 9. In a June 28, 2006 report that was based on a review of Dr. Colquitt's surgical pathology report, Dr. Naeye opined that the miner's coal workers' pneumoconiosis was far too mild to have had any role in his death. Director's Exhibit 10. In a February 26, 2007 report and a May 29, 2007 deposition, Dr. Hippensteel opined that the miner's simple pneumoconiosis did not cause or hasten his death. Employer's Exhibits 3, 6. In a February 26, 2007 report and a May 30, 2007 deposition, Dr. Rosenberg opined that the miner's death was related to a bleeding source from his left lung that was not caused by, related to, or hastened by coal dust exposure. Employer's Exhibits 4, 7. Dr. Rosenberg additionally opined that the miner's simple pneumoconiosis did not cause or hasten his death in any way. Employer's Exhibit 7. By contrast, in a June 13, 2006 report, Dr. Ford opined that the miner's coal workers' pneumoconiosis was, in part, the ultimate reason for his demise. Director's Exhibit 13. Dr. Ford found that the acute pulmonary hemorrhage that resulted in the miner's death was a direct consequence of his coal mine dust exposure. *Id.*

The administrative law judge properly accorded determinative weight to the opinions of Drs. Hippensteel and Rosenberg, because she found them thorough and well-reasoned.⁶ *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). Additionally, the administrative law judge properly accorded determinative weight to the opinions of Drs. Hippensteel and Rosenberg, because she found them supported by the objective evidence of record.⁷ *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985); *Pastva v. The Youghiogheny and Ohio Coal Co.*, 7 BLR 1-829, 1-832 (1985). Further, the administrative law judge properly accorded determinative weight to the opinions of Drs. Hippensteel and Rosenberg, because she found them supported by

⁶ The administrative law judge stated that "Dr. Hippensteel and Dr. Rosenberg, who reviewed all of the available medical evidence, concluded that [the miner's] simple pneumoconiosis found on autopsy was not extensive enough to have caused any impairment in his lifetime, or to have played any role in his death, which was due to a pulmonary hemorrhage, in turn caused by heart problems." Decision and Order at 16.

⁷ After noting that Drs. Hippensteel and Rosenberg opined that the miner's pneumoconiosis was not extensive enough to have caused impairment during his lifetime or death, the administrative law judge stated that "[t]he functional studies of record confirm that [the miner] did not have a pulmonary impairment during his lifetime." Decision and Order at 16.

Dr. Naeye's opinion. *Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991); *Bethlehem Mines Corp. v. Massey*, 736 F.2d 120, 7 BLR 2-72 (4th Cir. 1984); *Newland v. Consolidation Coal Co.*, 6 BLR 1-1286 (1984).

In addition, the administrative law judge properly accorded little weight to Dr. Ford's opinion, because she found that "[Dr. Ford] did not offer any objective medical support for his conclusion that the pneumoconiosis found on autopsy had a role in [the miner's] death."⁸ Decision and Order at 16; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985). Moreover, Dr. Ford provided no explanation for his findings on the miner's death certificate. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that a physician's statement that pneumoconiosis hastened a miner's death, without any explanation of that conclusion, is insufficient to support such a finding. *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-264 (4th Cir. 2000). Consequently, the miner's death certificate is insufficient to carry claimant's burden of proof since it is not supported by competent medical evidence linking the miner's death to his pneumoconiosis. *Sparks*, 213 F.3d at 192, 22 BLR at 2-264; *U.S. Steel Mining Co. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999); *see also Addison v. Director, OWCP*, 11 BLR 1-68 (1988). Thus, because the administrative law judge properly discounted Dr. Ford's opinion, the only medical opinion of record that could support a finding that pneumoconiosis caused, contributed to, or hastened the miner's death, we affirm the administrative law judge's finding that the evidence did not establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c).

In light of our affirmance of the administrative law judge's finding that the evidence did not establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c), an essential element of entitlement in a survivor's claim, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *Trumbo*, 17 BLR at 1-88.

⁸ The administrative law judge noted that the miner's pulmonary function studies produced normal results. Decision and Order at 15. The administrative law judge also stated that "[the miner] suffered from arterial hypoxemia, but as noted by Dr. Hippensteel and Dr. Rosenberg, this was the result of his severe coronary condition, which Dr. Ford did not even consider." *Id.* Further, the administrative law judge stated that Dr. Ford did not offer any support for his opinion that the miner's pneumothorax and acute pulmonary hemorrhage were a direct consequence of his coal mine dust exposure. *Id.*

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