

BRB No. 00-1175 BLA

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

Appeal of the Decision and Order - Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Alberta R. Combs, Louisville, Kentucky, *pro se*.

Barry H. Joyner (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,¹ without the assistance of counsel, appeals the Decision and Order - Denial of Benefits (99-BLA-1176) of Administrative Law Judge Robert L. Hillyard 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).² This case involves a survivor's claim

¹Claimant is the surviving spouse of the miner, who died on December 17, 1991. Director's Exhibit 10.

²The Department of Labor has amended the regulations implementing the Federal Coal

filed on June 26, 1997, which the administrative law judge properly considered under the regulations at 20 C.F.R. Part 718. After crediting the miner with one and one-half years of coal mine employment, the administrative law judge noted that the instant case involved a request for modification at the district director level. The administrative law judge stated that he would, therefore, consider all of the evidence of record to determine whether a mistake in a determination of fact was established pursuant to 20 C.F.R. §725.310 (2000).³ The administrative law judge found the evidence insufficient to establish that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2000). The administrative law judge further found the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) (2000) and, accordingly, denied benefits. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs, responds in support of the decision denying benefits.

Mine Health and Safety Act of 1969, as amended. These regulations became effective 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). The Board subsequently issued an order requesting supplemental briefing in the instant case. 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*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

³The instant survivor's claim was denied by the district director on October 13, 1998. Director's Exhibit 13. Subsequently, on April 30, 1999, claimant filed a request for modification of the district director's denial of benefits. Director's Exhibit 15. The district director denied claimant's modification request on June 15, 1999, Director's Exhibit 14, and the case was referred to the administrative law judge, who held a hearing on May 18, 2000. In his Decision and Order, the administrative law judge found that the sole ground for modification in a survivor's claim is whether there was a mistake in a determination of fact. Decision and Order at 4-5. The administrative law judge stated that he would therefore consider the entire record *de novo* in determining whether the evidence established entitlement. *Id.*

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Inasmuch as the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁴ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). 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 *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

⁴Section 718.205(c) provides, in pertinent part, 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.

20 C.F.R. §718.205(c).

In considering the evidence of record, the administrative law judge correctly found that the record does not include any evidence indicating that pneumoconiosis was a cause of the miner's death or that pneumoconiosis hastened the miner's death in any way. 20 C.F.R. §718.205(c)(1), (c)(2); Decision and Order and 5. The administrative law judge correctly stated that the miner's death certificate listed respiratory failure, chronic obstructive pulmonary disease, coronary artery disease with congestive heart failure, and right lower lobe pneumonia as the causes of the miner's death, but that these conditions were not linked to coal dust exposure. Decision and Order at 5; Director's Exhibit 10. Since the administrative law judge properly found that the record is devoid of evidence that supports claimant's burden under Section 718.205(c) (2000), the administrative law judge properly denied survivor's benefits.⁵ 20 C.F.R. §718.205(c); *Brown, supra*; Decision and Order at 5.

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

⁵Because there is no evidence of complicated pneumoconiosis in the record, claimant is precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. See 20 C.F.R. §§718.205(c)(3) and 718.304.