

BRB No. 04-0949 BLA

MILLIE JEAN WRIGHT)
(Widow of BENNIE WRIGHT))
)
 Claimant-Petitioner)
)
 v.)
)
 HAWKINS COAL COMPANY)
) DATE ISSUED: 08/19/2005
 and)
)
 OLD REPUBLIC INSURANCE COMPANY)
)
 Employers/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 of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Millie Jean Wright, Jenkins, Kentucky, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: McGRANERY, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ representing herself, appeals the Decision and Order (03-BLA-5698) of

¹ Claimant is the surviving spouse of the deceased miner who died on March 30, 1994. Director's Exhibit 9.

Administrative Law Judge Daniel J. Roketenetz 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). This case involves a survivor's claim filed on June 15, 2001. After crediting the miner with thirty-four years of coal mine employment, the administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). The administrative law judge also found that claimant was entitled to the presumption that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). However, the administrative law judge found that the evidence was insufficient to 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 contends that the administrative law judge erred in denying benefits. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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).

Because this 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).² See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director*,

²Section 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.

OWCP, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence establishes 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 Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *see also Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).

The administrative law judge properly found that there is no evidence in the record supportive of a finding that the miner's death was due to pneumoconiosis. The miner's death certificate does not support a finding of death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).³ Moreover, none of the hospital records or reports indicates that pneumoconiosis caused or hastened the miner's death in any way. The administrative law judge correctly found that Drs. Rosenberg, Fino and Caffrey opined that the miner's death was unrelated to his coal mine employment.⁴ Decision and Order at 15. Consequently, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20

(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).

³The miner's death certificate lists the immediate cause of death as congestive heart failure. Director's Exhibit 9. Metastatic lung cancer and pneumonitis are listed as other significant conditions contributing to the miner's death. *Id.*

⁴In a report dated September 16, 2003, Dr. Rosenberg attributed the miner's death to lung cancer. Employer's Exhibit 3. Dr. Rosenberg opined that the miner's coal workers' pneumoconiosis did not cause or hasten his death. *Id.* Dr. Rosenberg reiterated his opinions during a December 12, 2003 deposition. Employer's Exhibit 6.

In a report dated September 26, 2003, Dr. Fino attributed the miner's death to lung cancer. Employer's Exhibit 1. Dr. Fino opined that coal mine dust exposure played no role in the miner's death. *Id.* Dr. Fino reiterated his opinions during a December 8, 2003 deposition. Employer's Exhibit 5.

In a report dated June 14, 2004, Dr. Caffrey opined that the miner's death was not caused by, or in any way related to, his coal mine employment. Unmarked Employer's Exhibit.

C.F.R. §718.205(c).⁵

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

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

⁵Because there is no evidence of complicated pneumoconiosis in the record, the administrative law judge properly found that 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); Decision and Order at 10.