

BRB No. 05-0905 BLA

MONICA BERNADETTE TEPROVICH )  
(Widow of STANLEY TEPROVICH) )  
 )  
 Claimant-Petitioner )  
 ) DATE ISSUED: 08/16/2006  
 v. )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Respondent ) DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Monica Bernadette Teproovich, Quakake, Pennsylvania, *pro se*.

Sarah M. Hurley (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant,<sup>1</sup> representing herself, appeals the Decision and Order (05-BLA-5057) of Administrative Law Judge Ralph A. Romano 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

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<sup>1</sup>Claimant is the surviving spouse of the deceased miner who died on May 7, 1994. Director's Exhibit 4.

June 25, 2002.<sup>2</sup> The only contested issue in this case is whether the miner's death was due to pneumoconiosis. 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. The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

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 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).<sup>3</sup> See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director*,

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<sup>2</sup>The miner filed a claim for benefits on June 7, 1988. Director's Exhibit 1. In a Decision and Order on Remand dated January 24, 1996, Administrative Law Judge Ralph A. Romano awarded benefits on the miner's claim. *Id.*

<sup>3</sup>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).

*OWCP*, 11 BLR 1-85 (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 Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

The administrative law judge properly found that the only evidence supportive of a finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) is the miner's death certificate. Dr. Washinsky completed the miner's death certificate. Dr. Washinsky attributed the miner's death, *inter alia*, to anthracosilicosis.<sup>4</sup> Director's Exhibit 4. The administrative law judge permissibly found that the miner's death certificate is insufficient to establish that the miner's death was due to pneumoconiosis because it is not a reasoned medical finding.<sup>5</sup> Decision and Order at 6; *See generally Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997) (The mere statement of a conclusion by a physician, without any explanation of the basis for that statement, does not take the place of the required reasoning). The administrative law judge correctly stated that Dr. Sherman, the only other physician to address the cause of the miner's death, opined that pneumoconiosis did not cause, contribute to, or hasten the miner's death. Decision and Order at 5-6; Director's Exhibits 31, 36. Because it is based upon substantial evidence, 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 C.F.R. §718.205(c) is affirmed.<sup>6</sup>

Claimant indicates, in her statement in support of her appeal, that she intends to "produce additional or new evidence" concerning her case. In order to have additional evidence considered, claimant may file a petition for modification with the district director. *See* 33 U.S.C. §922, as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §725.310; *Lee v. Consolidation Coal Co.*, 843 F.2d 159, 11 BLR 2-106 (4th Cir. 1988); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986).

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<sup>4</sup>A diagnosis of anthracosilicosis constitutes "clinical" pneumoconiosis. *See* 20 C.F.R. §718.201(a)(1).

<sup>5</sup>Dr. Washinsky provided no explanation for his findings on the miner's death certificate. *See* Director's Exhibit 4.

<sup>6</sup>Because 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).

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge