

BRB No. 08-0132 BLA

B.J.B.)
(Surviving Divorced Spouse of N.W.B.))
)
Claimant-Petitioner)
)
v.)
)
U.S. STEEL CORPORATION)
) DATE ISSUED: 08/27/2008
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 - Denying Benefits of Stephen L. Purcell, Associate Chief Administrative Law Judge, United States Department of Labor.

B.J.B., Caretta, West Virginia, *pro se*.

Howard G. Salisbury, Jr. (Kay Casto & Chaney PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, the miner's surviving divorced spouse, appeals the Decision and Order - Denying Benefits (05-BLA-06018) of Associate Chief Administrative Law Judge Stephen L. Purcell (the administrative law judge) 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 eleven years of qualifying coal mine employment and found that employer was the responsible operator. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish pneumoconiosis arising

out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1)-(a)(4) and 718.203(b) or death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).¹ Accordingly, the administrative law judge denied benefits.

Claimant appeals, without the assistance of counsel. Employer responds, urging affirmance of the administrative law judge's Decision and Order – Denying Benefits. The Director, Office of Workers' Compensation Programs, has declined to respond to this appeal.

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 and is in accordance with law.² *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Co.*, 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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivors benefits under 20 C.F.R. Part 718, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. Death will be considered to be due to pneumoconiosis if pneumoconiosis caused the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, 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; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85, 1-86 (1988). Pneumoconiosis is a "substantially contributing cause" of the miner's death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5); *see also Shuff v. Cedar Coal Co.*, 969 F.2d 977-80, 16 BLR 2-90, 2-92-93 (4th Cir. 1992), *cert denied*, 506 U.S. 1050 (1993).

¹ The miner died on June 18, 2004. Director's Exhibit 7.

² The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as the miner was last employed in the coal mining industry in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 3.

The only medical evidence submitted in this claim was the miner's death certificate and his autopsy report. Director's Exhibits 7, 8. Both documents fail to address whether the miner suffered from pneumoconiosis or any respiratory impairment arising out of coal mine employment. The cause of death was listed as cocaine intoxication with no contributing causes noted. Director's Exhibit 7. The autopsy report is limited to the head, and did not address the miner's respiratory system. Director's Exhibit 8. The record contains no x-ray or medical opinion evidence, no objective studies, and no medical records. Lacking sufficient evidence, the administrative law judge properly found that claimant failed to establish pneumoconiosis by any of the methods provided at 20 C.F.R. §718.202(a)(1)-(4). Claimant bears the burden of proving entitlement.³ See *Director, OWCP v. Greenwich Collieries* [Ondecko], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); see also *Belcher v. Beth-Elkhorn Corp.*, 6 BLR 1-1180 (1984); *White v. Director, OWCP*, 6 BLR 1-368 (1983). The administrative law judge's finding that claimant failed to establish pneumoconiosis at Section 718.202(a)(1)-(4) and entitlement is, therefore, affirmed. See *Trumbo*, 17 BLR at 1-87.

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

³ The administrative law judge also noted that claimant failed to produce evidence regarding her marital status or dependency upon the miner. Decision and Order at 5; see 20 C.F.R. §725.212