

BRB No. 01-0491 BLA

MARTHA S. TRENT)	
(Widow of ROLLIN TRENT))	
)	
Claimant-Petitioner)	
v.)	
)	
ALLIED COAL COMPANY)	DATE ISSUED:
)	
and)	
)	
KENTUCKY COAL PRODUCERS' SELF)	
INSURANCE FUND)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED)	
STATES DEPARTMENT OF LABOR)	
)	DECISION and ORDER
Party-in-Interest)	

Appeal of the Decision and Order of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Martha S. Trent, Jeremiah, Kentucky, *pro se*.

David H. Neeley (Neeley & Reynolds, PSC), Prestonsburg, Kentucky, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (1999-BLA-0931) of Administrative Law Judge Rudolf L. Jansen denying

benefits on a survivor's claim¹ 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 The administrative law judge credited claimant with twenty-three years of coal mine employment and found that claimant established the existence of pneumoconiosis arising out of coal mine pursuant to 20 C.F.R. §§718.202(a) and 718.203(b) (2000). However, the administrative law judge found that claimant failed to establish that the miner's death was due to or hastened by pneumoconiosis pursuant to 20 C.F.R. §718.205(c) (2000). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. In response, employer argues that the administrative law judge's Decision and Order denying survivor's benefits is supported by substantial evidence. The Director, Office of Workers' Compensation Programs, did not file a brief on the merits of this appeal.³

¹Claimant, Martha S. Trent, is the surviving spouse of the deceased miner, who died on March 25, 1997. Director's Exhibit 8. Claimant filed her claim for survivor's benefits on February 9, 1998. Director's Exhibit 1. The miner's claim filed on May 10, 1992 was denied by Administrative Law Judge Richard K. Malamphy on June 10, 1992. Director's Exhibit 44. The record does not indicate that the miner took any further action with regard to this claim.

²The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. 718, 722, 725, and 726 (2001).

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 claim. On August 9, 2001, the District Director issued its decision upholding the validity of the challenged regulations and dissolving the February, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001).

³We affirm the administrative law judge's findings with respect to the length of the miner's coal mine employment and pursuant to 20 C.F.R. §718.202(a)(2)-

(3)(2000), as these findings have not been challenged and are not prejudicial to claimant. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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. See *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 supported by substantial evidence, are rational, and are consistent with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, and that 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 (2001); see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The administrative law judge correctly noted that the requirements of Section 718.205(c) (2000) are satisfied if claimant proves that pneumoconiosis hastened the miner's death. Decision and Order at 7; see 20 C.F.R. §718.205(c)(5) (2001); see also *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's finding that the miner's death was not due to pneumoconiosis pursuant to Section 718.205(c)(2000). The administrative law judge considered all the relevant medical evidence consisting of the miner's death certificate⁴ and the opinions of Drs. Westerfield, Fino and Breeding. Director's Exhibits 8, 12, 27, 37-40. The administrative law judge reasonably found that the death certificate was not probative because it did not provide an explanation for the cause of death and did not address whether coal dust exposure had any impact on the miner's death. *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); Decision and Order at 7; Director's Exhibit at 8.

⁴The miner's death certificate, signed by Dr. Campbell, states that the cause of death was carcinoma of the lung. Director's Exhibit 8.

The administrative law judge also acknowledged Dr. Breeding's treating physician status, and within his discretion, found Dr. Breeding's opinion, that the miner's death was hastened by his pneumoconiosis, less persuasive than the contrary opinions of Drs. Westerfield and Fino.⁵ Decision and Order at 7. Although the administrative law judge may give greater weight to a medical report based upon the doctor's status as a treating physician, see *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989), the administrative law judge must also determine if the physician's conclusion is supported by a reasoned medical opinion. See *Griffith, supra*; see also *Peabody Coal Co. v. Groves*, 2002 WL 58545 (6th Cir. 2002). The administrative law judge reasonably found Dr. Breeding's opinion to be "troubling" because he did not explain the basis for his conclusion and his professional qualifications in the field of respiratory medicine are not part of the record. Decision and Order at 7; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). In contrast, Drs. Westerfield and Fino are both Board-certified in internal medicine and pulmonary diseases, and the administrative law judge's finding that their opinions are reasoned and documented is supported by substantial evidence. *Id.*; see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*). Thus, the administrative law judge, rationally found the opinion of Dr. Breeding, the only opinion of record reflecting that pneumoconiosis hastened the miner's death, less persuasive than the contrary opinions of Drs. Fino and Westerfield. Therefore, we affirm the administrative law judge's finding that claimant has failed to establish that the miner's death was hastened by pneumoconiosis pursuant to Section 718.205(c) (2000).

⁵Dr. Westerfield reviewed the medical evidence and concluded that "coal workers' pneumoconiosis did not cause or contribute to the development of lung cancer which took [the miner's] life." Director's Exhibit 12. Dr. Fino also concluded that "[t]here was no evidence to indicate that [the miner's] death was caused, contributed to, or hastened by the inhalation of coal mine dust." Director's Exhibit 27.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge