

BRB No. 01-0525 BLA

ANNA M. MARSHALL)	
(Widow of ROBERT J. MARSHALL))	
)	
Claimant-Petitioner)	DATE ISSUED:
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED))
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Anna M. Marshall, Pottsville, Pennsylvania, *pro se*.

Mary Forrest-Doyle (Eugene Scalia, 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: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order (2000-BLA-0697 and 2000-BLA 0698) of Administrative Law Judge Ainsworth H. Brown denying a request for modification of a miner's duplicate claim and denying survivor's benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety

¹Claimant is the widow of Robert J. Marshall, the miner, who died on May 30, 1999. Director's Exhibit 3 (Survivor's Claim).

Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).² After accepting the parties' stipulation to 7.25 years of coal mine employment and considering the request for modification of the denial of the miner's duplicate claim, the administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c) (2000). With respect to the survivor's claim, the administrative law judge found that claimant failed to establish that the

²The miner filed his initial claim for federal black lung benefits on July 14, 1980. Director's Exhibit 23-1(Miner's Claim). The Department of Labor (DOL) denied benefits on April 10, 1981, finding that the miner failed to establish any of the elements of entitlement. Director's Exhibit 23-10 (Miner's Claim). On September 21, 1989, the miner filed his second claim for benefits, which the DOL subsequently denied on December 15, 1989. Director's Exhibits 24-16), 24-17(Miner's Claim). Claimant took no further action in the pursuit of benefits until filing the instant duplicate claim on September 12, 1997. Director's Exhibit 1 (Miner's Claim). In a Decision and Order issued on March 29, 1999, Administrative Law Judge Lawrence P. Donnelly concluded that the new evidence did not establish a material change in conditions under 20 C.F.R. §725.309 (2000). Director's Exhibit 22 (Miner's Claim). Accordingly, Judge Donnelly denied the miner's 1997 duplicate claim. Following the miner's death on May 30, 1999, claimant filed her claim for survivor's benefits on August 26, 1999, submitting additional evidence. Director's Exhibit 1 (Survivor's Claim). The district director considered the filing of the survivor's claim and the submission of additional evidence as a timely request for modification of Judge Donnelly's denial of the miner's 1997 claim as well as a survivor's claim.

miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) (2000). Accordingly, the administrative law judge denied benefits in both the miner's claim and the survivor's claim. On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, responds urging affirmance of the denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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 (1985).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 (2000) in a living miner's claim, claimant must prove that the miner suffered from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that his pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203 and 718.204 (2001). Failure to establish any one of these elements precludes entitlement. *See Perry v. Director, OWCP*, 9 BLR 1-1(1986)(*en banc*).

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, 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). 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)(2001); *see also Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 1006, 13 BLR 2-100, 2-108 (3d Cir. 1989).

After consideration of the administrative law judge's Decision and Order, the issues on appeal and the relevant evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of the miner's and survivor's claim.

In considering the miner's claim, the administrative law judge, based on his *de novo*

review of all the evidence of record, found that the evidence failed to establish the existence of a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(c)(2000).³ The administrative law judge correctly found that none of the pulmonary function studies and blood gas studies of record yielded qualifying values under Section 718.204(c)(1) and (c)(2)(2000).⁴ Although the administrative law judge did not make a finding under 20 C.F.R. §718.204(c)(3)(2000), the record is devoid of any evidence regarding the existence of cor pulmonale with right sided congestive heart failure. Therefore, claimant is unable to demonstrate total disability as a matter of law under Section 718.204(c)(3)(2000). Under Section 718.204(c)(4)(2000), the administrative law judge correctly found that no physician of record opined that the miner had any respiratory disability, including the last examining physician, Dr. Rashid. Decision and Order at 3; Director's Exhibit 6 (Miner's Claim). Consequently, we affirm the administrative law judge's determination on the merits that claimant has failed to establish a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(c)(1)-(4)(2000).⁵

With respect to the survivor's claim, the administrative law judge correctly found that the death certificate, completed by Dr. Tavaría, the miner's treating physician, did not include pneumoconiosis as the miner's cause of death. Dr. Tavaría listed respiratory failure due to, or as a consequence of, increased intracranial pressure from "glioblastoma multiforme" as the sole cause of the miner's death. Director's Exhibit 3 (Survivor's Claim). Further, the administrative law judge properly found that there was no evidence contradicting Dr. Cander's opinion that pneumoconiosis did not have "any influence" in the miner's death. Decision and Order at 4; Director's Exhibit 12(a) (Survivor's Claim). Consequently, we affirm the administrative law judge's finding pursuant to Section 718.205(c)(2000).

Inasmuch as claimant has failed to establish the existence of a total respiratory disability and failed to establish that pneumoconiosis contributed to or hastened the miner's death pursuant to Section 718.205(c), an award of benefits under Part 718 in both the miner's

³The administrative law judge applied the total disability regulation set forth at 20 C.F.R. §718.204(c)(2000). After the revision of the regulations, the total disability regulation is now set forth at 20 C.F.R. §718.204(b)(2)(2001).

⁴A "qualifying" pulmonary function study or arterial blood gas study yields values which are equal to or less than the applicable table values, *i.e.* Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study yields values which exceeds the requisite table values. *Id.*

⁵There is no evidence of complicated pneumoconiosis in the record. See 20 C.F.R. §718.304.

claim and the survivor's claim is precluded. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Perry, supra*. Therefore, we need not address the administrative law judge's findings under Section 718.202(a). *Endrezzi v. Bethlehem Mines Corp.*, 8 BLR 1-11 (1985).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge