

BRB No. 04-0503 BLA

KATHLEEN DUROSE)	
(Widow of JOHN DUROSE))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
JEDDO HIGHLAND COAL COMPANY)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: 01/31/2005
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Kathleen Durose, Girardville, Pennsylvania, *pro se*.

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

PER CURIAM:

Claimant, the miner's widow, without the assistance of counsel, appeals the Decision and Order - Denying Benefits (03-BLA-5591) of Administrative Law Judge Paul H. Teitler rendered on a survivor's claim¹ filed pursuant to the provisions of Title IV

¹ Claimant filed the instant claim on June 28, 2002. Director's Exhibit 3. The miner's death certificate indicates that he died on November 28, 2000 due to acute myocardial infarction and cardiac arrhythmia. Director's Exhibit 5. Respiratory failure, lymphoma, dehydration, and anthracosilicosis are listed on the death certificate as "Other Significant Conditions." *Id.* By Decision and Order dated September 24, 1987, Administrative Law Judge David W. Di Nardi awarded benefits in the miner's claim, filed on July 6, 1982. Director's Exhibit 1.

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 initially indicated that employer did not contest any issue resolved in the miner's claim. The administrative law judge found, "Specifically, [e]mployer agrees the evidence establishes the deceased miner worked twenty-two (22) years in coal mine employment, that he had coal worker's [sic] pneumoconiosis which arose out of coal mine employment and that he was totally disabled due to pneumoconiosis." Decision and Order at 2. The administrative law judge then indicated that the sole issue contested by employer was whether claimant met her burden to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c). The administrative law judge found that the evidence of record failed to meet claimant's burden to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant generally challenges the administrative law judge's finding that the miner's coal workers' pneumoconiosis did not affect his death.² Neither employer nor the Director, Office of Workers' Compensation Programs, has filed a response brief in 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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (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).

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205; *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). For survivor's claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the irrebuttable presumption set forth at 20 C.F.R. §718.304 is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001,

² Claimant attaches a copy of the miner's death certificate and an unsigned letter from Dr. John Redmond, III dated September 27, 2001. The administrative law judge did not refer to this letter in his Decision and Order dated January 29, 2004. Moreover, this letter contains no reference to the miner's coal workers' pneumoconiosis or death.

13 BLR 2-100 (3d Cir. 1989).

After consideration of the administrative law judge's Decision and Order, the issue on appeal and the evidence of record, we affirm the administrative law judge's denial of survivor's benefits based on the insufficiency of the evidence to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c). The administrative law judge correctly found that while the miner's death certificate lists anthracosilicosis under "Other Significant Conditions," "there is nothing in the death certificate, however, that indicates that anthracosilicosis was a substantially contributing cause of the miner's death or that it hastened the miner's death in any way." Decision and Order at 3. There is no additional evidence supportive of claimant's burden at 20 C.F.R. §718.205(c). We thus affirm the administrative law judge's finding that the evidence fails to meet claimant's burden to establish death due to pneumoconiosis at Section 718.205(c). 20 C.F.R. §718.205(c); *Lukosevicz*, 888 F.2d at 1006, 13 BLR at 2-107-108. We therefore affirm the administrative law judge's denial of benefits in the instant survivor's claim.

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

JUDITH S. BOGGS
Administrative Appeals Judge