

BRB No. 97-0709 BLA

BRENDA STURGILL	)	
(Widow of JERRY STURGILL)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
ISLAND CREEK COAL COMPANY	)	
	)	
Employer-Respondent	)	
	)	
and	)	
	)	
PRICE COAL COMPANY	)	
	)	
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 Clement J. Kichuk,  
Administrative Law Judge, United States Department of Labor.<sup>1</sup>

Brenda Sturgill, Martin, Kentucky, *pro se*.<sup>2</sup>

John W. Walters (Jackson & Kelly), Lexington, Kentucky, for employer, Island

---

<sup>1</sup>A formal hearing was held before Administrative Law Judge Joel G. Gardiner on November 18, 1996. On December 20, 1996, the case was transferred to Administrative Law Judge Clement J. Kichuk, who properly adjudicated the case. Decision and Order at 2; Order of Reassignment dated December 20, 1996.

<sup>2</sup>Claimant's appeal was filed by Susie Davis, a lay representative with the Kentucky Black Lung Association. By Order dated February 12, 1997, the Board advised claimant that her appeal would be reviewed under the provisions provided at 20 C.F.R. §§802.211(e), 802.220. See generally *Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Creek Coal Company.

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

PER CURIAM:

Claimant,<sup>3</sup> without the assistance of counsel, appeals the Decision and Order Denying Benefits (94-BLA-207) of Administrative Law Judge Clement J. Kichuk 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) . The administrative law judge found that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a). Decision and Order at 10. He further 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). Decision and Order at 4, 10. Accordingly, he denied benefits.

On appeal, claimant generally contends that she is entitled to benefits. Employer responds, and urges affirmance of the administrative law judge's denial of benefits.<sup>4</sup> The

---

<sup>3</sup>Claimant is Brenda Sturgill, widow of the miner, Jerry Sturgill, who died on March 26, 1992. Claimant filed a survivor's claim for black lung benefits on June 4, 1992. Director's Exhibit 1. The miner previously filed two claims which were denied by the district director on the grounds that the miner failed to establish the existence of pneumoconiosis or total respiratory disability. The April 4, 1986 claim was deemed abandoned. Director's Exhibits 51, 52. The second claim, that of August 28, 1989, was denied on May 22, 1990. Director's Exhibit 52. No further action was taken on that claim.

<sup>4</sup>Employer preserves the responsible operator issue, which the administrative law judge did not resolve. Decision and Order at 10; Employer's Brief at 1. In view of our final disposition of this case, *see infra*, we need not remand the case to the administrative law judge for consideration of the responsible operator issue. *See Johnson v. Highland Coal Co.*, 12 BLR 1-53 (1988).

Director, Office of Workers' Compensation Programs, has elected not to submit a brief on appeal.

In an appeal by a claimant filed without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

After consideration of the administrative law judge's Decision and Order Denying Benefits and the relevant evidence of record, we conclude that the administrative law judge's Decision and Order Denying Benefits contains no reversible error and therefore it is affirmed.

We first address the administrative law judge's findings at Section 718.205(c). In a survivor's claim filed after January 1, 1982, the evidence must establish that the miner's death was due to pneumoconiosis and not to a medical condition unrelated to pneumoconiosis. *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Death will be found to be due to pneumoconiosis where pneumoconiosis is a substantially contributing cause of the miner's death. The United States Court of Appeals for the Sixth Circuit, wherein jurisdiction of this case arises, has construed "substantially contributing cause" under Section 718.205(c)(2) as encompassing situations in which "pneumoconiosis actually hastened the miner's death." *Brown v. Rock Creek Mining Co.*, 996 F. 2d 812, 17 BLR 2-135 (6th Cir. 1993). The administrative law judge properly found that none of the physicians who addressed the cause of the miner's death found that his death was, in any way, related to pneumoconiosis. The administrative law judge properly found that Drs. Reynolds and O'Connor, who conducted the autopsy, listed the cause of death as a "massive acute myocardial infarction and pulmonary embolus" without any reference to pneumoconiosis. Director's Exhibit 47. He properly found that Dr. Fausch, the miner's attending physician and cardiologist, who prepared the death certificate, listed the immediate cause of death as massive pulmonary embolism, massive posterior left and posterior right infarction and cardiovascular disease, without any reference to coal workers' pneumoconiosis as a cause of the miner's death. Director's Exhibit 4. He found that Dr. Fausch's conclusions were supported by the hospital treatment records and diagnoses prior to the miner's death. See *Addison v. Director, OWCP*, 11 BLR 1-68 (1988). Similarly, the administrative law judge properly found that the reports of Drs. Naeye, Kleinerman, Caffrey, Dahhan and Morgan unanimously concluded that the miner's death was in no way related to pneumoconiosis. Drs. Kleinerman, Caffrey, and Naeye, whom the administrative law judge found to be highly respected pathologists,

reviewed the histologic slides, autopsy reports and medical evidence, and opined that the miner's death was not contributed to or hastened by his exposure to coal mine dust. Decision and Order at 8; Employer's Exhibits 4, 6, 8; Director's Exhibit 49. The administrative law judge also properly found that Drs. Dahhan and Morgan, pulmonologists, after reviewing the medical evidence, opined that the miner's coal mine employment in no way contributed to his death. Decision and Order at 10; Director's Exhibit 52; Employer's Exhibit 5. We thus hold that the administrative law judge properly found that the medical evidence is insufficient to carry claimant's burden to prove that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). See *Neeley, supra*; see generally *Brown, supra*; *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).<sup>5</sup>

---

<sup>5</sup>As we affirm the administrative law judge's finding at 20 C.F.R. §718.205(c), we decline to address the administrative law judge's findings at Section 718.202(a).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.<sup>6</sup>

SO ORDERED.

---

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

---

NANCY S. DOLDER  
Administrative Appeals Judge

---

<sup>6</sup>In light of the foregoing, any error in the administrative law judge's failure to make a length of coal mine employment finding is harmless as it cannot affect the outcome of this case, see *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).