

BRB No. 06-0163 BLA

AMANDA BEGLEY)	
(Widow of LINCOLN BEGLEY))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 06/28/2006
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Amanda Begley, Royalton, Kentucky, *pro se*.

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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 appears without the assistance of counsel and appeals the Decision and Order – Denial of Benefits (2004-BLA-6450) of Administrative Law Judge Daniel J. Roketenetz with respect to a survivor's claim filed pursuant to the provisions of the Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).¹ The administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718 and found that the evidence was insufficient to establish either the

¹ Claimant was represented by counsel before the administrative law judge. Hearing Transcript at 4.

existence of pneumoconiosis under 20 C.F.R. §718.202(a) or that that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).² Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis. The Director, Office of Workers' Compensation Programs, has responded and urges affirmance of the denial of benefits.

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. *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 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).

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(a); 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 presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).³

² The miner filed a claim for benefits on March 1, 1974, which was finally denied on September 30, 1985. Director's Exhibit 1. The miner died on January 12, 2003. *Id.* Claimant, the miner's surviving spouse, filed her claim on February 3, 2003. Director's Exhibit 3.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner's coal mine employment occurred in Kentucky. Director's Exhibit 1; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

After reviewing the administrative law judge's Decision and Order and the relevant evidence of record, we conclude that the administrative law judge's finding that the evidence is insufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner's death is rational and supported by substantial evidence. The administrative law judge determined correctly, pursuant to Section 718.205(c), that the evidence regarding the cause of the miner's death does not indicate that there was any link between pneumoconiosis and the miner's death. Decision and Order at 9. Dr. Leslie prepared the death certificate and a report concerning the miner's final hospitalization. On the death certificate, Dr. Leslie identified pneumonia, dementia, and congestive heart failure as the causes of the miner's demise. Director's Exhibit 10. Dr. Leslie stated in his medical report that the miner suffered from septicemia, chronic airways obstruction, coma, and coronary arteriosclerosis, among other conditions, at the time of his death. Director's Exhibit 11. Dr. Leslie did not, however, indicate that any of the conditions described on the death certificate or in his report were related to pneumoconiosis or dust exposure in coal mine employment as is required under Section 718.205(c). *Id.* Dr. Burki reviewed the miner's hospital records and concluded that "there is no evidence that the miner's death was hastened or contributed to by the underlying pneumoconiosis." Director's Exhibit 23.

In light of the fact that the administrative law judge correctly found that the record does not contain evidence establishing a connection between pneumoconiosis and the miner's death, we affirm the administrative law judge's determination that claimant did not prove that the miner's death was related to pneumoconiosis or dust exposure in coal mine employment pursuant to Section 718.205(c). *Griffith*, 49 F.3d 184, 19 BLR 2-111; *Brown*, 996 F.2d 812, 17 BLR 2-135. Because the administrative law judge properly determined that claimant did not establish this essential element of entitlement, we must also affirm the denial of benefits.⁴ See 20 C.F.R. §718.205(c); *Trumbo*, 17 BLR at 1-87.

⁴ We need not address the administrative law judge's determination that claimant did not prove that the miner had pneumoconiosis. Error, if any, in the administrative law judge's findings under 20 C.F.R. §718.202(a) is harmless in light of our affirmance of the administrative law judge's determination that claimant did not establish that the miner's death was caused by pneumoconiosis, an essential element of entitlement. *Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge