

BRB No. 99-0617 BLA

ESSIE C. DOLIN)	
(Widow of LINBERT DOLIN))	
)	
Claimant-Petitioner))
)	
v.)	
)	
ARMCO, INCORPORATED/ AK STEEL CORPORATION)	DATE ISSUED:
)	
)	
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 Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle and Rundle, L.C.), Pineville, Kentucky, for claimant.

Lisa A. Warner (Shaffer & Shaffer), Madison, West Virginia, for employer.

Edward Waldman (Henry L. Solano, 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: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order - Denying Benefits (98-BLA-0851)

of Administrative Law Judge Gerald M. Tierney on a survivor's 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). Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge initially noted that the miner worked over thirty years in qualifying coal mine employment and that employer conceded the existence of pneumoconiosis. The administrative law judge then found that employer failed to rebut the presumption that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b) and that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erroneously failed to find that the miner's death was due to pneumoconiosis under Section 718.205(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has also filed a response brief, contending that providing medical evidence from the miner's previously denied claims² to Dr. Warren was not necessary for the proper evaluation of the survivor's claim.³

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the 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).

To establish entitlement to benefits on a survivor's claim filed on or after January 1, 1982, a claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(a), 718.205(a). Death will be considered due to pneumoconiosis if the evidence establishes that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2), (4). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it actually hastens the miner's death. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993); *see U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, F.3d , No. 98-2412, 21 BLR 2-639 (4th Cir. 1999); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763, 21 BLR 2-589, 2-604 (4th Cir. 1999).

With respect to Section 718.205(c), claimant generally asserts that the objective medical evidence from the miner's claims demonstrates that his pulmonary impairment was severe enough to have contributed to his cardiac condition, which ultimately resulted in his demise. Consequently, claimant argues that because the Department of Labor failed to provide medical evidence from the miner's previous claims, Dr. Warren was not provided with a complete record upon which to render an opinion as to the cause of death. Claimant, therefore, requests that the case be remanded for the district director to do so. The Director responds, arguing that providing medical evidence from the miner's previously denied claims to Dr. Warren was not necessary for the development and evaluation of this survivor's claim. The Director contends that, contrary to claimant's argument, Dr. Warren did not state that he did not have a basis for evaluating whether the miner's respiratory condition contributed to his cardiac death, but instead, Dr. Warren mentioned several factors which militated against such a finding. Thus, Dr. Warren's opinion satisfied the district director's obligation to obtain "necessary" medical evidence in accordance with Section 725.405(c).⁴ In addition, the Director avers that claimant and her attorney had the opportunity either to submit evidentiary information to Dr. Warren or to develop additional medical evidence prior to the November 1998 formal hearing.

Dr. Warren, the miner's treating physician, completed the death certificate and, at the request of the district director, reviewed the death certificate, autopsy report, and his treatment records.⁵ Director's Exhibits 9, 10. In a letter dated August 22, 1997, Dr. Warren noted that during the miner's last visit on November 21, 1996, the decedent had not complained of dyspnea but did complain of cardiac pain, had no leg swelling, had stable angina, and "had had sudden cardiac death [sic] on an exercise test in the past." Director's Exhibit 10. The physician continued:

During that exercise test, his shortness of breath prior to ventricular fibrillation was not out of the ordinary and I have no basis to say clinically that his pneumoconiosis hastened his death, although I do note that his autopsy report recorded a "very severe degree of simple coal workers' pneumoconiosis of the nodular fibrosis type." I cannot say with certainty that his pneumoconiosis did not hasten his death but I have no clinical evidence to confirm that it did. Furthermore, he had sudden cardiac death in the bathroom, not during an episode of extreme exertion (such as would have been expected to have lowered his blood oxygen were his lung disease playing a major role in his demise).

Director's Exhibit 10. Contrary to claimant's contention, Dr. Warren opined that

pneumoconiosis did not hasten the miner's death because there is "no clinical evidence to confirm that it did." Director's Exhibit 10.

It is well established that the Act, regulations, and case precedent all provide that the claimant, not the Department of Labor, bears the burden of establishing entitlement. The Board has explained that "although the Department of Labor, through the [district director], has the duty to develop evidence pertinent to the claim when the claim is initially filed, 20 C.F.R. §725.404 *et seq.*, this requirement does not preclude the claimant from obtaining and submitting his own evidence. 20 C.F.R. §725.407(b)." *White v. Director, OWCP*, 6 BLR 1-368, 1-370 (1983); see *Barnes v. ICO Corp.*, 31 F.3d 678, 18 BLR 2-319 (8th Cir. 1994)(claimant and his attorney, not the district director, had the duty to obtain satisfactory evidence to support his claim). Accordingly, claimant and counsel had the duty to obtain satisfactory evidence to support her claim. Inasmuch as the administrative law judge properly determined that claimant failed to satisfy her burden of establishing that pneumoconiosis contributed to the miner's death because the death certificate, autopsy report, and the opinion of Dr. Warren failed to link pneumoconiosis to the miner's death, we affirm the administrative law judge's determination at Section 718.205(c). See *Jarrell, supra*; *Mays, supra*; *Shuff, supra*; Decision and Order at 2-3.

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting

Administrative Appeals Judge