

BRB No. 98-1041 BLA

MARETTA F. LAMBERT)
(Widow of ROBERT L. LAMBERT))
)
 Claimant-Petitioner)
)
 v.)
)
 BLACK MOUNTAIN COAL COMPANY) DATE ISSUED:
)
 and)
)
 WEST VIRGINIA COAL WORKERS')
 PNEUMOCONIOSIS FUND)
)
 Employer/Carrier-Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

Maretta L. Lambert, Cedar Bluff, Virginia, *pro se*.

Stephen E. Crist (Employment Programs Litigation Unit), Charleston, West Virginia, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹, without the benefit of counsel² appeals the Decision and Order (97-BLA-

¹ Claimant is Maretta F. Lambert, surviving spouse of the miner, Robert L. Lambert, who died on November 20, 1995. Director's Exhibit 6. Claimant filed an application for survivor's benefits with the Department of Labor (DOL) on January 26, 1996. Director's

0771) of Administrative Law Judge Stuart A. Levin denying benefits 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 administrative law judge concluded that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Antonio v. Bethlehem Mines Corp.*, 6 BLR 1-702 (1983). 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). Employer, in response, asserts that the administrative law judge's findings are supported by substantial evidence, and urges affirmance of the administrative law judge's Decision and Order. The Director, OWCP, has filed a letter indicating that he will not file a brief in the instant case.

Exhibit 1.

² Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

The administrative law judge correctly found that the miner's death certificate listed a malignant brain tumor as the sole cause of the miner's death. Director's Exhibit 6; Decision and Order at 4. The administrative law judge also correctly found that both Dr. Renn, Employer's Exhibit 1, and Dr. Naeye, Director's Exhibit 8, opined that the bilateral bronchopneumonia the miner suffered was a direct complication of his brain cancer and unrelated to his coal mine work. Decision and Order at 4. The administrative law judge considered the autopsy report of Dr. Stefanini, who concluded that the miner died of respiratory failure brought about by a combination of factors, including chronic bronchitis and chronic obstructive pulmonary disease, but failed to state that these ailments were caused by the miner's coal dust exposure, or that any respiratory disease arising out of coal mine employment contributed to or hastened the miner's death. Director's Exhibit 7; Decision and Order at 4. Likewise, the administrative law judge considered Dr. Harnsbarger's opinion that the miner died of a malignant brain tumor which is a disease of the general population not in anyway related to coal mining. The administrative law judge credited the opinions of Drs. Renn and Naeye as he properly found them to be uncontradicted. Decision and Order at 4. As it is claimant's burden to establish that the miner's pneumoconiosis was a substantially contributing cause of the miner's death, *i.e.*, hastened the miner's death, *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992); *see also Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988), we hold that the administrative law judge's finding that the miner's death was not caused by pneumoconiosis is supported by substantial evidence. We affirm, therefore, the administrative law judge's finding that the medical evidence fails to establish death due to pneumoconiosis at Section 718.205(c). Thus, we affirm the administrative law judge's denial of benefits in the instant case.³

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

³ We need not address the administrative law judge's findings with respect to length of coal mine employment and the existence of pneumoconiosis at Section 718.202(a), as they are rendered moot by the Board's disposition of the case. *Rematta v. Director, OWCP*, 8 BLR 1-214 (1985).

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge