

BRB No. 98-1042 BLA

HELEN E. ROSE)
(Widow of RONDAL B. ROSE))
)
 Claimant-Petitioner)
)
 v.)
)
 ISLAND CREEK COAL COMPANY) DATE ISSUED:
)
 and)
)
 EMPLOYERS SERVICES CORPORATION)
)
 Employer/Carrier-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 Richard K. Malamphy,
Administrative Law Judge, United States Department of Labor.

Helen E. Rose, Doran, Virginia, *pro se*.

Mary Rich Maloy (Jackson & Kelly), 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 - Denying

¹ Claimant is Helen Rose, surviving spouse of the miner, Rondal Rose, who died on February 9, 1996. Director's Exhibit 9. Claimant filed an application for survivor's benefits with the Department of Labor on August 15, 1996. Director's Exhibit 1.

² Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant,

Benefits (97-BLA-1368) of Administrative Law Judge Richard K. Malamphy 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) and was insufficient to establish 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, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a brief in the instant case.

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 the miner's death certificate listed cardiogenic shock, due to cardiac tamponade, due to hemorrhagic pericarditis as a result of myocardial infarction as the sole causes of death, and that it failed to list coal workers' pneumoconiosis as a cause of the miner's death. Director's Exhibit 9; Decision and Order at 10. He further noted that the death certificate was corroborated by Dr. Ferguson, the autopsy prosector. Director's Exhibits 10, 11; Decision and Order at 10. Further, the administrative law judge correctly noted that all of the other evidence relative to the cause of the miner's death attributed it to some form of heart disease, and concluded that coal workers' pneumoconiosis did not cause or hasten the miner's death. He noted that Drs. Crouch, Director's Exhibit 14, Harnsbarger, Director's Exhibit 28, Bush, Employer's Exhibit 1, Fino, Employer's Exhibits 2, 4; and Loudon, Employer's Exhibit 3 all agreed with this assessment. Decision and Order at 10. As it is claimant's burden to establish that the miner's pneumoconiosis was a substantial contributing cause of 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 claimant failed to establish that the miner's death was due to pneumoconiosis is supported by substantial evidence and must be affirmed. Accordingly, 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

ROY P. SMITH
Administrative Appeals Judge

³ We need not address the administrative law judge's findings with respect to 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).

MALCOLM D. NELSON, Acting
Administrative Appeals Judge