

BRB No. 98-0334 BLA

VIRTLE JEAN HATFIELD)	
(Widow of JOHN T. HATFIELD))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BEATRICE POCAHONTAS COAL)	DATE ISSUED:
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 Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Virtle Jean Hatfield, Hurley, Virginia, *pro se*.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, the surviving spouse of the deceased miner, appeals, without the assistance of counsel,¹ the Decision and Order Denying Benefits (97-BLA-0939) of Administrative Law Judge Daniel F. Sutton 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.

¹ As stated in the Board's Order, issued December 2, 1997, Tim White, a benefits counselor with Stone Mountain Health Services in Vansant, Virginia, on behalf of claimant, requested an appeal of the administrative law judge's Decision and Order Denying Benefits, but Mr. White is not representing claimant on appeal. *Hatfield v. Beatrice Pocahontas Coal Co.*, BRB No. 98-0334 BLA (Dec. 2, 1997)(unpub. Order); see *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

§901 *et seq.* (the Act). On September 11, 1995, the miner died, Director's Exhibit 7, and, in May, 1996, claimant filed a survivor's claim. Director's Exhibit 1.² The administrative law judge, in the instant case, cancelled the hearing and made a decision on the written record at the request of claimant. 1997 Decision and Order at 2. The administrative law judge, in a Decision and Order issued in October, 1997, held that the doctrine of collateral estoppel precluded claimant from relitigating the issue of length of coal mine employment, and found that the miner had twenty-one and three-fourths years of coal mine employment. 1997 Decision and Order at 3. Further, the administrative law judge found that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), and that claimant established that the miner's pneumoconiosis arose out of his coal mine employment under 20 C.F.R. §718.203(b). The administrative law judge concluded that the evidence was insufficient to establish that pneumoconiosis hastened the miner's death in any way. See 20 C.F.R. §718.205(c); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993). Accordingly, benefits were denied.³

² The miner filed a claim in June, 1977. Director's Exhibit 39(1). Administrative Law Judge Robert S. Amery found that the miner had at least twenty-one and three-fourths years of coal mine employment. Further, Judge Amery found that the evidence was sufficient to establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(3), but that rebuttal was established under 20 C.F.R. §727.203(b)(2)-(4). Judge Amery also found that the evidence was insufficient to establish entitlement pursuant to 20 C.F.R. Part 410, Subpart D. Accordingly, benefits were denied. Claimant appealed, and the Board, in a Decision and Order issued in August, 1987, affirmed Judge Amery's Decision and Order denying benefits. *Hatfield v. Island Creek Coal Co.*, BRB No. 85-1869 BLA (Aug. 11, 1987)(unpublished).

³ We affirm, as uncontested on appeal, the administrative law judge's findings that the miner had twenty-one and three-fourths years of coal mine employment, and that claimant established the existence of pneumoconiosis arising out of coal mine employment,

Claimant, without the assistance of counsel, appeals, contending generally that the administrative law judge erred in denying benefits. Employer responds, advocating affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has submitted a letter stating that he will not respond to the appeal unless specifically requested to do so by the Board.

In an appeal by a claimant proceeding 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

see 20 C.F.R. §§718.202(a)(2), 718.203(b), inasmuch as these findings are not adverse to claimant. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In order to establish entitlement to survivor's benefits in a claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction the instant case arises, has held that pneumoconiosis should be considered a substantially contributing cause of death if it actually hastened the miner's death.⁴ *Shuff, supra*, 967 F.2d at 979-980, 16 BLR at 2-93.

⁴ The death certificate, signed by Dr. Thakkar, listed the immediate cause of death as acute respiratory failure due to pneumonia due to chronic obstructive pulmonary disease. Director's Exhibit 12. A posthumous note by Dr. Thakkar included a diagnosis of pneumonia, chronic obstructive pulmonary disease and renal insufficiency. Director's Exhibit 10.

The administrative law judge initially stated that the evidence that tended to support a finding that the miner's death was hastened by his pneumoconiosis consisted of Dr. Michos's report and the autopsy report from Dr. Abrenio, who listed coal workers' pneumoconiosis as the primary final diagnosis.⁵ The administrative law judge credited the opinions of Drs. Morgan, Fino, and Bush⁶ over the opinions of Drs. Abrenio and Michos to conclude that claimant had not proven that the miner's pneumoconiosis hastened his death in any way. Decision and Order at 14; see *Shuff, supra*. We affirm the administrative law judge's finding, inasmuch as the administrative law judge permissibly credited the opinions of Drs. Morgan and Fino because of their "particular qualifications,"⁷ Decision and Order at 14; see *Dillon v. Peabody Coal Co.*, 11 BLR 1-113, 1-114 (1988), and permissibly found that the reports of Drs. Morgan, Fino, and Bush were well documented and well reasoned. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Director's Exhibit 38; Employer's Exhibits 2, 3. The administrative law judge stated that these physicians "provided detailed explanations as to how the objective medical evidence supported their conclusions that the miner's respiratory or pulmonary impairment was not caused by his pneumoconiosis but rather by his smoking history, and that his death was not hastened by pneumoconiosis." Decision and Order at 14; Director's Exhibit 38; Employer's Exhibits 2, 3. We therefore affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis under Section 718.205(c)(1) and (c)(2).⁸ Finally, the administrative law judge properly found that

⁵ An autopsy by Dr. Abrenio included a diagnosis of severe simple coal workers' pneumoconiosis and other illnesses. Director's Exhibit 10. Dr. Michos stated that the issue of whether prior coal mine employment contributed to or hastened the miner's death "is difficult to ascertain." Dr. Michos added that coal workers' pneumoconiosis may have played a minor role in hastening the miner's death. Director's Exhibit 13.

⁶ Dr. Morgan opined that the miner died of pneumonia, adding that the miner also had mild simple coal workers' pneumoconiosis, but that the latter condition played no role in his death. Employer's Exhibit 3. Dr. Fino found that the miner's death was not due to pneumoconiosis. Employer's Exhibit 2. Dr. Bush opined that the miner had mild simple coal workers' pneumoconiosis that did not contribute to his death. Director's Exhibit 38.

⁷ Dr. Fino's curriculum vitae is of record and indicates that he is Board-certified in internal medicine with a subspecialty in pulmonary disease, and that he is a B reader. Employer's Exhibit 2. Dr. Morgan is a B reader and a fellow in the American College of Chest Physicians, and a member of the American Thoracic Society. Director's Exhibits 12, 39; Employer's Exhibit 3.

⁸ The record also contains medical opinions from Drs. Naeye and Kleinerman. Dr. Naeye stated that he did not have enough information to know whether coal workers' pneumoconiosis was severe enough to have contributed to death. Dr. Naeye added that multiple disorders, including coal workers' pneumoconiosis, appeared to have had a role in the miner's death. Director's Exhibit 11. In a more recent letter, Dr. Naeye stated that the

there was no evidence of complicated pneumoconiosis and claimant was therefore precluded from establishing death due to pneumoconiosis under Section 718.205(c)(3). See 20 C.F.R. §§718.205(c)(3), 718.304; Decision and Order at 13.

miner's simple coal workers' pneumoconiosis was mild and did not contribute in any way to the miner's death. Employer's Exhibit 1. Dr. Kleinerman found that the miner had mild to moderate simple coal workers' pneumoconiosis and that coal workers' pneumoconiosis played no role in nor did it hasten the miner's death. Director's Exhibit 37. Employer contends that the administrative law judge erred in finding that the opinions of Drs. Naeye and Kleinerman were hostile to the Act. Since we affirm the administrative law judge's denial of benefits, we decline to address employer's argument, inasmuch as any error by the administrative law judge in this regard would not affect the disposition of the case. See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge