

BRB No. 99-1245 BLA

MAXIE SCOTT)	
(Widow of BILTON SCOTT))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Maxie Scott, Richmond, Kentucky, *pro se*.

Helen H. Cox (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: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, the miner's widow, without the assistance of counsel, appeals the Decision and Order Denying Benefits (98-BLA-0299) of Administrative Law Judge Donald W. Mosser on a survivor's claim and a miner's duplicate 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). The miner filed his first claim for benefits on June 3, 1975, which was denied by Administrative Law Judge David A. Clarke, Jr., on May 9, 1980. Judge Clark found that the miner established eight years and six months of coal mine employment, and the presence of pneumoconiosis pursuant to 20 C.F.R. Part 410, Subpart D, but failed to establish total disability due to pneumoconiosis. Accordingly, benefits were denied. Director's Exhibits 42. The miner appealed, and in *Scott v. Director, OWCP*, BRB No. 80-

548 BLA (Feb. 19, 1982)(unpub.), the Board affirmed the denial of benefits. Director's Exhibit 42. The miner filed a duplicate claim for benefits on January 26, 1984, and Administrative Law Judge Bernard J. Gilday, Jr., found that the miner failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d), and therefore denied benefits on October 1, 1986. Director's Exhibit 42. The miner filed another duplicate claim on November 5, 1988. Administrative Law Judge Richard K. Malamphy determined that the miner failed to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b) and (c) and denied benefits. Director's Exhibit 56. The miner appealed, and in *Scott v. Director, OWCP*, BRB No. 93-0578 BLA (May 27, 1994)(unpub.), the Board affirmed the finding of eight and one-half years of coal mine employment, and affirmed Judge Malamphy's finding that the miner failed to establish total disability due to pneumoconiosis at Section 718.204(b) and therefore affirmed the denial of benefits. The miner died on February 9, 1993, and the miner's widow ("claimant") filed a timely motion for reconsideration, which was denied by the Board on August 26, 1996. Director's Exhibit 65. Claimant twice more requested modification of the denial of the miner's third claim, both of which were denied. Director's Exhibits 67, 68, 84, 85, 89. Claimant filed a survivor's claim on January 23, 1997. Director's Exhibit 89. Administrative Law Judge Donald W. Mosser (the administrative law judge) reviewed all the evidence of record and found that claimant failed to establish modification on the miner's claim, pursuant to Section 725.310, and further found that claimant failed to establish death due to pneumoconiosis pursuant to Section 718.205(c). Accordingly, benefits were denied on both the miner's and the survivor's claims. Claimant appeals, generally contending that the administrative law judge erred in failing to award benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the administrative law judge's Decision and Order.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable 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).

In considering whether modification was established on the miner's claim, the administrative law judge reviewed the prior findings and evidence and the newly submitted evidence, and properly found that since the prior evidence failed to establish total disability and the single pulmonary function study and blood gas study did not yield qualifying results pursuant to Section 718.204(c)(1) and (2), claimant failed to establish total disability

¹ A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1), (2).

thereunder. 20 C.F.R. §718.204(c)(1), (2); *see Schetroma v. Director, OWCP*, 18 BLR 1-19 (1993); Decision and Order at 5-6. Further, as the record contained no evidence of cor pulmonale with right sided congestive heart failure pursuant to Section 718.204(c)(3), the administrative law judge properly found that claimant could not establish total disability thereunder. 20 C.F.R. §718.204(c)(3). Finally, the administrative law judge considered the medical opinion of Dr. Broudy, the only opinion submitted subsequent to the prior denial. Dr. Broudy found that the miner did not have a totally disabling respiratory impairment. Director's Exhibit 88. The administrative law judge acted properly in according this opinion great weight based on Dr. Broudy's credentials in the field of pulmonary diseases and based on the fact that the opinion was supported by underlying objective evidence. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8 (1996), *aff'd in part*, 21 BLR 1-51 (1996); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *see* Decision and Order at 7. Based on his review of this opinion along with the prior relevant evidence, the administrative law judge properly found that claimant failed to establish total disability at Section 718.204(c)(4), and properly found that claimant failed to establish a basis for modification. *See Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994). We therefore affirm the administrative law judge's denial of benefits on the miner's claim.

The administrative law judge next considered the evidence on the survivor's claim pursuant to Section 718.205(c). In a survivor's claim filed after January 1, 1982, claimant must establish the existence of pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. 20 C.F.R. §§718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Moreover, the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that death due to pneumoconiosis may be established by showing that the miner's death was hastened by pneumoconiosis. *Brown v. Rock Creek Coal Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *see Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). The evidence of record in the instant case contains the death certificate, signed by a coroner who is not a physician, stating that the immediate cause of death was myocardial infarction, and that other significant contributions are "pneumoconiosis - per physicians statement." Director's Exhibit 92. However, Dr. Broudy opined that the death certificate does not confirm that pneumoconiosis led to the myocardial infarction, played a significant role in or hastened the miner's death. Dr. Broudy further opined that the presence of pneumoconiosis in its simple stage would not be expected to cause any significant increase in morbidity or mortality and certainly would not be expected to lead to myocardial infarction. Director's Exhibit 88.

The administrative law judge permissibly accorded greater weight to Dr. Broudy's opinion because it was supported by hospital records and because of his expertise. *Church, supra; Dillon, supra*. Decision and Order at 7. In addition, the administrative law judge found that one of the miner's daughters testified at the hearing that the coroner added the

language of the significant conditions after reading three physicians' opinions, and upon the request of the miner's survivors. Hearing Transcript at 10-11. As the death certificate was completed by a non-physician, the administrative law judge permissibly found that it was insufficient to establish that the miner's death was due to, substantially contributed to by, or in any way hastened by pneumoconiosis. *See Willis v. Birchfield Mining Co.*, 15 BLR 1-59 (1991). As there is no other evidence of record which could support claimant's burden of establishing death due to pneumoconiosis, we affirm the administrative law judge's denial of benefits on the survivor's claim pursuant to Section 718.205(c).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge