

BRB No. 06-0360 BLA

ROSA LEE KING)
(Widow of ROBERT E. KING))
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED: 09/25/2006
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Rosa Lee King, Wittensville, Kentucky, *pro se*.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order Denying Benefits (2004-BLA-6322) of Administrative Law Judge Jeffrey Tureck (the

¹ Claimant is the surviving spouse of the miner, who died on March 31, 2003. The death certificate lists the miner's cause of death as myocardial infarction. No other contributing causes or conditions are listed. Director's Exhibit 10. The miner was awarded benefits on a claim filed on January 24, 1989. *Id.* Claimant is not eligible for derivative survivor's benefits based on the filing date of the miner's claim. *See Smith v. Camco Mining, Inc.*, 13 BLR 1-17, 1-18-22 (1989); *Neeley v. Director, OWCP*, 11 BLR 1-85, 1-86-87 (1988). The miner's claim is not before the Board.

administrative law judge) 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. §901 *et seq.* (the Act). The administrative law judge found that because benefits had been awarded on the miner's claim and because the Director, Office of Workers' Compensation Programs, (the Director) had not challenged the findings made on the award of miner's benefits, the sole issue to be determined in the instant case is whether the miner's coal workers' pneumoconiosis "played any role in his death." Decision and Order at 1. The administrative law judge found that the evidence of record failed to establish that the miner's pneumoconiosis caused or hastened his death pursuant to 20 C.F.R. §718.205. Decision and Order at 1-3. Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of survivor's benefits. Neither employer nor the Director, Office of Workers' Compensation Programs, (the Director) has filed a brief in response to claimant's appeal.

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 Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-361 (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).

After consideration of the administrative law judge's Decision and Order, and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence and contains no reversible error. In considering the relevant evidence of record, the administrative law judge found that the miner's death certificate listed myocardial infarction as the cause of death with no other condition listed. Director's Exhibit 10; Decision and Order at 2. The administrative law judge further found that Dr. Patrick, one of the miner's treating physicians, specifically opined that pneumoconiosis played no role in the miner's death. Director's Exhibit 12; Decision and Order at 2. Moreover, the administrative law judge found that the relevant hospital records list only cardiac arrest as the cause of the miner's death with no linkage of the miner's death to pneumoconiosis. Director's Exhibit 15; Decision and Order at 2. The administrative law judge further determined that there was no other evidence pertaining to the cause of the miner's death and thus found claimant unable to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c).

In sum, the administrative law judge considered all of the relevant medical evidence, and properly found that there was no evidence supportive of claimant's burden to establish that the miner's death was due to pneumoconiosis pursuant to Section

718.205(c). We, therefore, affirm his finding that claimant failed to establish that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c); *see Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). Consequently, we affirm the denial of survivor's benefits.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge