

BRB No. 07-0215 BLA

V. P. (Surviving Spouse of C. P.))
)
 Claimant-Petitioner)
)
 v.)
)
 EASTOVER MINING COMPANY) DATE ISSUED: 09/25/2007
)
 and)
)
 UNDERWRITERS SAFETY & CLAIM)
)
 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 Denying Benefits of William S. Colwell,
Administrative Law Judge, United States Department of Labor.

V. P., Harlan, Kentucky, *pro se*.

W. Stacy Huff (Huff Law Office), Harlan, Kentucky, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and
HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order Denying Benefits (04-BLA-6472) of Administrative Law Judge William S. Colwell 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 Act).² The administrative law judge found that sixteen years of coal mine employment were established. Decision and Order at 3. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 2. The administrative law judge found that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4) or that death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. In response, employer contends that the administrative law judge's Decision and Order Denying Benefits should be affirmed. The Director, Office of Workers' Compensation Programs, is not participating in this appeal.

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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85

¹ Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, 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).

² The miner filed a claim for benefits on May 27, 1977, which was denied by the district director on March 27, 1979 because the miner failed to establish the existence of pneumoconiosis and total disability. Director's Exhibit 1. No further action was taken on this claim. The miner died on October 20, 1994. Director's Exhibit 3. Claimant filed a survivor's claim on May 21, 2003. Director's Exhibit 3.

(1993). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

After considering the administrative law judge's Decision and Order and the evidence of record, we hold that the Decision and Order of the administrative law judge is rational, supported by substantial evidence, and in accordance with law.³ It is, therefore, affirmed.

In finding that death due to pneumoconiosis was not established at Section 718.205(c), the administrative law judge properly found that the record did not contain any medical opinion directly attributing the miner's death to pneumoconiosis. The administrative law judge properly credited the well-reasoned opinions of Drs. Rosenberg and Branscomb, who both found that the miner's death was due to liver disease and that exposure to coal mine dust did not contribute to, or hasten, the miner's death.⁴ See *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The administrative law judge's finding that the evidence fails to establish that the miner's death was due to pneumoconiosis is, therefore, affirmed. See *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). Further, because we affirm

³ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as the miner was last employed in the coal mine industry in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

⁴ Reviewing the evidence of record, Dr. Rosenberg found that the miner's death was related to hepatic insufficiency and liver failure directly related to the miner's long alcohol consumption history, which was well-documented by the medical evidence of record. Dr. Rosenberg also opined that the miner's chronic obstructive lung disease did not cause or hasten the miner's death. Employer's Exhibit 2.

Reviewing the evidence of record, Dr. Branscomb opined that the miner's death was due to cirrhosis of the liver, noting that there was no contribution to this process by the miner's coal mine dust exposure. Dr. Branscomb explained that his opinion was supported by objective medical evidence. Employer's Exhibit 1.

the administrative law judge's finding that death due to pneumoconiosis was not established, 20 C.F.R. §718.205(a), an essential element of entitlement in a survivor's claim, we need not consider the administrative law judge's finding as to the existence of pneumoconiosis.

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