

BRB No. 97-0513 BLA

LOIS K. HORNE )  
(Widow of JACK C. HORNE) )  
 )  
                    Claimant-Petitioner )  
 )  
                    v. )  
 )  
SEA "B" MINING COMPANY )  
 )  
                    and )  
 )  
THE PITTSTON COMPANY )  
 )  
                    Employer/Carrier- )  
                    Respondents )  
 )  
DIRECTOR, OFFICE OF WORKERS' )                      Date Issued:  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
                    Party-in-Interest )                      DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Clement J. Kichuk, Administrative Law Judge, United States Department of Labor.

Lois K. Horne, Cedar Bluff, Virginia, *pro se*.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant, without the representation of counsel,<sup>1</sup> appeals the Decision and Order on Remand Denying Benefits (94-BLA-0898) of Administrative Law Judge Clement J. Kichuk,

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<sup>1</sup>Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. White is not representing claimant on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

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). This claim is before the Board for the second time. The administrative law judge found that claimant established twenty-six years of coal mine employment, and based on the filing date, applied the regulations found at 20 C.F.R. Part 718. In his first Decision and Order, the administrative law judge found the existence of pneumoconiosis arising from coal mine employment pursuant to 20 C.F.R. §§718.202(a)(2) and (a)(4) and 718.203(b), but that death was not due to pneumoconiosis at 20 C.F.R. §718.205(c). Claimant appealed, and employer cross-appealed. In *Horne v. Sea "B" Mining Company*, BRB Nos. 95-1915 BLA and 95-1915 BLA-A (March 28, 1996)(unpub.), the Board vacated the administrative law judge's finding at 20 C.F.R. §718.202(a)(2) and (a)(4) and, in addition, vacated his finding at 20 C.F.R. §718.205(c). The case was remanded for further consideration. On remand, the administrative law judge found the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2), but found that pneumoconiosis did not cause or contribute to death pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. Claimant appeals, contending that the administrative law judge erred in failing to award benefits. Employer responds, contending that although the administrative law judge erred in finding the existence of pneumoconiosis at Section 718.202(a)(2), the denial of benefits may, nonetheless, be affirmed. The Director, Office of Workers' Compensation Programs, has not participated 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. *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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In a survivor's claim filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. See *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); 20 C.F.R. §§718.202, 718.203, 718.205(c). Pneumoconiosis is considered a substantially contributing cause of a miner's death if it actually hastened the miner's death. See *Shuff v. Cedar Coal Co.*, 969 F.2d 977, 16 BLR 2-90 (4th Cir. 1992).

The administrative law judge found that pneumoconiosis did not cause or contribute to the miner's death pursuant to Section 718.205(c). The evidence of record contains the medical opinions of Drs. Stefanini, Naeye, Caffrey, Tomashefski, Douppnik and Fino. Director's Exhibits 11, 12, 27, 31; Claimant's Exhibit 1; Employer's Exhibit 12. The administrative law judge specifically credited the opinion of Dr. Stefanini, the autopsy prosector who found the cause of death to be a phlebothrombosis, left lower extremity and its embolization to right cavity of heart with extension of thrombus into pulmonary arterial trunk. Decision and Order at 9; Director's Exhibit 11; Claimant's Exhibit 1. In addition, as

the administrative law judge properly noted, none of the remaining physicians of record attributed the miner's death to pneumoconiosis. Inasmuch as the administrative law judge properly determined that none of the evidence of record establishes that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), an essential element of entitlement, the administrative law judge properly denied benefits. *See Shuff, supra; Neeley, supra.*

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

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge