

BRB No. 97-0570 BLA

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|---------------------------------|---|--------------------|
| GRACE C. BROCK                  | ) |                    |
| (Widow of HIRAM BROCK)          | ) |                    |
|                                 | ) |                    |
| Claimant-Petitioner             | ) |                    |
|                                 | ) |                    |
| v.                              | ) |                    |
|                                 | ) |                    |
| GOLDEN GLOW COALS, INCORPORATED | ) | DATE ISSUED:       |
|                                 | ) |                    |
| and                             | ) |                    |
|                                 | ) |                    |
| KENTUCKY COAL PRODUCERS         | ) |                    |
| SELF-INSURANCE FUND             | ) |                    |
|                                 | ) |                    |
| 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 of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Mark K. Solomons (Arter & Hadden), Washington, DC, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, widow of the deceased miner, appeals the Decision and Order (96-BLA-207) of Administrative Law Judge Michael P. Lesniak denying benefits 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, and the employer stipulated to fourteen years of coal mine employment and based on the

date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>1</sup> The administrative law judge concluded that claimant was barred from filing a duplicate claim under 20 C.F.R. §725.309 as the instant claim was filed beyond the one year time limit for modification requests pursuant to 20 C.F.R. §725.310. The administrative law judge further concluded that claimant was precluded from receiving any benefits pursuant to 20 C.F.R. §725.228 as claimant plead guilty to reckless homicide in the death of the miner and was convicted of a felony. The administrative law judge finally noted that the evidence of record was insufficient to establish the existence of complicated pneumoconiosis or death due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a), 718.304 and 718.205(c). Accordingly, benefits were denied. On appeal, claimant contends that the evidence of record is sufficient to establish the existence of pneumoconiosis and death due to pneumoconiosis pursuant to Section 718.202(a) and 718.205(c). Employer responds, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932; *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits pursuant to Part 718 on a survivor's claim filed after January 1, 1982, 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. §§718.1, 718.205, 725.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

On appeal, claimant does not challenge the administrative law judge's findings that

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<sup>1</sup> The miner died on August 17, 1990. Claimant filed her initial claim for benefits on June 18, 1992, which was denied on December 8, 1992. Director's Exhibit 23. The instant claim was filed September 23, 1994. Director's Exhibit 1.

claimant is precluded from filing a duplicate claim pursuant to Section 725.309 and from receiving benefits pursuant to Section 725.228. We therefore affirm these findings as unchallenged on appeal.<sup>2</sup> *Skrack v. Island Creek Coal Co.*, 6 BLR 1-610 (1983).

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

REGINA C. McGRANERY  
Administrative Appeals Judge

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<sup>2</sup> On appeal, claimant challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a) and 718.205(c). As the administrative law judge's findings that claimant is barred from filing a duplicate claim and is precluded from entitlement to benefits are affirmed, we need not address the administrative law judge's findings pursuant to Section 718.202(a) and 718.205(c) or claimant's contentions thereunder. *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Watts v. Peabody Coal Co.*, 17 BLR 1-68 (1992).