

BRB No. 97-1441 BLA

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

Appeal of the Decision and Order of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Viola Spurlock, London, Kentucky, *pro se*.

Jeffrey S. Goldberg (Marvin Krislov, Deputy Solicitor for National Operations; 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 and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ representing herself, appeals the Decision and Order (96-BLA-0655) of Administrative Law Judge Robert L. Hillyard denying benefits 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). The

¹Claimant is the surviving spouse of the deceased miner who died on April 22, 1995. Director's Exhibit 6.

instant case involves a survivor's claim filed on June 7, 1995. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance 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).

Inasmuch as the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).² See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c);

²Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or

Neeley v. Director, OWCP, 11 BLR 1-85 (1988). The United States Court of Appeals for the Sixth Circuit, wherein appellate jurisdiction in the instant case arises, has held that pneumoconiosis will be considered a substantially contributing cause of the miner's death if it actually hastened the miner's death. *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

(3) Where the presumption set forth at §718.304 is applicable.

20 C.F.R. §718.205(c).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718. The administrative law judge properly found that the miner's death certificate³ was insufficient to support a finding of death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Decision and Order at 16. The administrative law judge also properly noted that none of the hospital records or reports indicate that pneumoconiosis caused, contributed to, or hastened the miner's death in any way.⁴

³Dr. Eldridge completed the miner's death certificate. Dr. Eldridge attributed the miner's death to lymphoma. Director's Exhibit 6.

⁴In a "Death Summary" dated May 4, 1995, Dr. Saha's final diagnosis was "Positive T cell lymphoma." Director's Exhibit 9. Dr. Saha did not indicate that the miner suffered from pneumoconiosis or that the disease contributed in any way to his death.

Dr. Shank was a consulting physician for the miner during his April, 1995 hospitalization. In a report dated June 28, 1995, Dr. Shank noted that claimant suffered from gastric lymphoma with metastatic spread. Director's Exhibit 8. Despite chemotherapy and aggressive supportive care, Dr. Shank reported that the miner died on April 22, 1995. *Id.* Although Dr. Shank indicated that the miner had a history of pneumoconiosis, he did not indicate that pneumoconiosis contributed to

Id. Consequently, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁵

the miner's death. *Id.*

⁵Because there is no evidence of complicated pneumoconiosis in the record, claimant is precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. See 20 C.F.R. §718.205(c)(3).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge