

BRB No. 00-0224 BLA

RUTH BAILEY)	
(Widow of EMORY J. BAILEY, Sr.))	
)	
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 - Denying Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Ruth Bailey, Columbus, Ohio, *pro se*.

Rita A. Roppolo (Henry L. Solano, Solicitor of Labor; 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: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denying Benefits (98-BLA-0727) of Administrative Law Judge Daniel J. Roketenetz 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 administrative law judge noted that the parties agreed that the miner had fourteen years of qualifying coal mine

¹Claimant is Ruth Bailey, wife of the miner, Emory J. Bailey, Sr., who died on April 29, 1996. Director's Exhibit 1. Claimant filed this application for survivor's benefits on November 5, 1996. *Id.*

employment. The administrative law judge then found that claimant established that the miner had suffered from simple pneumoconiosis arising out of coal mine employment, but that the evidence failed to show that pneumoconiosis hastened the miner's death in any manner pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge's findings are erroneous. The Director, Office of Workers' Compensation Programs (the Director), has responded, urging affirmance of the decision.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718 in a claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The United States Court of Appeals for the Fourth Circuit has held that evidence demonstrating that pneumoconiosis hastened the miner's death establishes that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to Section 718.205(c)(2). *See Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

In finding that claimant failed to establish that pneumoconiosis played a role in the miner's death, the administrative law judge found that both the application for survivor's benefits and the death certificate show the cause of death to be metastatic prostate cancer, dehydration, and chronic anemia. Decision and Order at 6. The administrative law judge found that the evidence indicates that the miner's pneumoconiosis "existed coincidentally to Mr. Bailey's cancer, which was the principal cause of his death and unrelated to pneumoconiosis." *Id.* This determination by the administrative law judge is rational and supported by the only evidence of record which addresses the cause of the miner's death, the death certificate. Director's Exhibit 9. Inasmuch as claimant has failed to submit any evidence which indicates that the miner's pneumoconiosis hastened the miner's death, we

²The administrative law judge's finding that claimant established the existence of pneumoconiosis is unchallenged on appeal and is therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

affirm the administrative law judge's finding that claimant did not establish her entitlement to benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge