

BRB No. 02-0492 BLA

MALINA ADKINS	)	
(Widow of KERMIT O. ADKINS)	)	
	)	
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 on Remand of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Malina Adkins, Beckley, West Virginia, *pro se*.

Mary Forrest-Doyle (Howard Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, appears without the assistance of counsel and appeals the Decision and Order (2001-BLA-0291) of Administrative Law Judge Daniel L. Leland denying benefits with respect to 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).<sup>1</sup> In light of the concession of the Director, Office of Workers' Compensation Programs (the Director), that the miner had pneumoconiosis arising out of coal mine employment, the only issue before the administrative law judge concerned whether the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).<sup>2</sup> The administrative law judge considered the evidence of record and determined that it was insufficient to establish that pneumoconiosis caused or contributed to the miner's demise. Accordingly, benefits were denied. Claimant asserts generally on appeal that she is entitled to benefits.<sup>3</sup> The Director has responded and urges affirmance of the denial of benefits.

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 Co.*, 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 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 benefits pursuant to 20 C.F.R. Part 718 in a survivor's claim filed after January 1, 1982, claimant must prove that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a

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<sup>1</sup> Claimant is Malina Adkins, the miner's widow. The miner, Kermit O. Adkins, died on December 23, 1998. Director's Exhibit 6. Claimant filed an application for survivor's benefits on July 20, 1999. Director's Exhibit 1.

<sup>2</sup> The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>3</sup> Claimant stated in her letter notifying the Board of her desire to appeal the denial of benefits that she would submit additional medical reports. Although the Board cannot accept or address new evidence, *see* 20 C.F.R. §802.301(b), claimant can seek modification within one year of the final denial of benefits by filing a request for modification with the district director. *See* 20 C.F.R. §725.310(a).

substantially contributing cause of death. See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 725.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Pneumoconiosis is considered a “substantially contributing cause” of a miner’s death if it hastens the miner’s death. See 20 C.F.R. §718.205(c)(5); see also *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S. Ct. 969 (1993).<sup>4</sup>

Upon consideration of the administrative law judge’s Decision and Order and the evidence of record, we conclude that the administrative law judge’s findings are supported by substantial evidence and contain no reversible error. The administrative law judge determined correctly that the record does not contain evidence establishing that pneumoconiosis played any role in causing the miner’s death. Decision and Order at 3. The single item of medical evidence that is relevant to the cause of the miner’s demise is the death certificate, prepared by Dr. Oar. Dr. Oar identified myocardial infarction due to coronary artery disease as the cause of the miner’s death and indicated that sepsis, prostate cancer, and metastasis were other significant conditions contributing to death, but not resulting in the immediate cause of death. Director’s Exhibit 6. The record does not contain any other evidence in which the cause of the miner’s death is addressed.<sup>5</sup> The administrative law judge properly concluded, therefore, that claimant did not meet her burden of proving that pneumoconiosis caused or contributed to the miner’s death pursuant to Section 718.205(c). See *Shuff, supra*; *Neeley, supra*.

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<sup>4</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner was employed in the coal mine industry in the State of West Virginia. See Director’s Exhibit 2; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*). Dr. Oar treated the miner during his last hospitalization and completed a final admission report. The report contains several diagnoses, including chronic obstructive pulmonary disease. Dr. Oar did not state a conclusion, however, as to the cause of the miner’s death in this report. Director’s Exhibit 9. Although the record also contains a number of medical reports in which pneumoconiosis and/or chronic obstructive pulmonary disease are diagnosed, these documents were prepared during the miner’s lifetime, and therefore, do not contain any statements relating these conditions to the miner’s death. See Director’s Exhibit 16.

<sup>5</sup> Dr. Oar treated the miner during his last hospitalization and completed a final admission report. The report contains several diagnoses, including chronic obstructive pulmonary disease. Dr. Oar did not state a conclusion, however, as to the cause of the miner’s death in this report. Director’s Exhibit 9. Although the record also contains a number of medical reports in which pneumoconiosis and/or chronic obstructive pulmonary disease are diagnosed, these documents were prepared during the miner’s lifetime, and therefore, do not contain any statements relating these conditions to the miner’s death. See Director’s Exhibit 16.

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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PETER A. GABAUER, Jr.  
Administrative Appeals Judge