

BRB No. 03-0531 BLA

BARBARA HAIRSTON (o/b/o FANNIE M. SPENCER))

Claimant-Petitioner)

v.)

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)

Respondent)

DATE ISSUED: 02/19/2004

DECISION and ORDER

Appeal of the Decision and Order of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Barbara Hairston, Norfolk, Virginia, *pro se*.

Jeffrey S. Goldberg (Howard M. Radzely, 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: SMITH, McGRANERY and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (02-BLA-5328) of Administrative Law Judge Edward Terhune Miller denying survivor's 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). Claimant, Barbara Hairston, is the daughter

of Fannie M. Spencer, the deceased divorced spouse¹ of the alleged miner John L. Spencer, also deceased. After claimant's request and the parties agreement to waive a formal hearing, the administrative law judge found that claimant failed to submit any evidence to establish entitlement under 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant challenges the administrative law judge's finding pursuant to 20 C.F.R. §718.205(c). 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 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 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 benefits pursuant to 20 C.F.R. Part 718 in a survivor's claim filed after January 1, 1982, claimant must establish 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 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); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Pneumoconiosis is 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).

After considering 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 survivor's benefits under Section 718.205(c). The administrative law judge found that claimant failed to submit any evidence to establish that the alleged miner had been employed as a coal miner, that he had had pneumoconiosis, that pneumoconiosis had contributed to his death and that Mrs. Spencer qualified as a surviving divorced spouse. Decision and Order at 5. The administrative

¹ On April 27, 2001, Fannie M. Spencer, the surviving divorced spouse of the deceased miner, John L. Spencer, filed for benefits. Employer's Exhibit 2. Mrs. Spencer died on January 16, 2002 and her daughter, Barbara Hairston, is pursuing this claim on behalf of her mother. Employer's Exhibits 3, 7, 9, 23.

law judge correctly found that there is no medical evidence that establishes the miner suffered from pneumoconiosis and the miner's death certificate only listed coronary insufficiency due to cachexia as the cause of death. Decision and Order at 5; Director's Exhibit 19.

The administrative law judge also determined that the relevant employment history of record "only indicates coal mine work in West Virginia for an unknown period of undisclosed exposure." Decision and Order at 2; Director's Exhibit 4. The administrative law judge further found that there is no proof that Mrs. Spencer was "economically dependent," either receiving at least half of her support or receiving significant contributions from the alleged miner on the month before he died on February 10, 1982. 20 C.F.R. §725.201(a)(2)(ii); Decision and Order at 2, 5. The administrative law judge further noted that the divorce decree issued on May 23, 1974, which dissolved the marriage of John L. and Fannie M. Spencer, made no provision for support. Decision and Order at 2; Director's Exhibit 19. Moreover, the administrative law judge found that claimant does not meet the requirements to be eligible for benefits as a surviving child pursuant to 20 C.F.R. §§725.209, 725.219. Consequently, we affirm as supported by substantial evidence, the administrative law judge's finding that claimant has failed to establish any element of entitlement under Section 718.205(c). 20 C.F.R. §725.103.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge