

BRB No. 01-0930 BLA

PEGGY TAYLOR)	
(Widow of LEO TAYLOR))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
CLINCHFIELD COAL COMPANY)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Peggy Taylor, Honaker, Virginia, *pro se*.

Timothy W. Gresham (PennStuart), Abingdon, Virginia, for employer.

Before: SMITH, HALL and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel,² appeals the Decision and Order (01-BLA-0441) of Administrative Law Judge Jeffrey Tureck denying benefits on a miner's claim

¹Claimant is Peggy Taylor, the miner's widow. The miner, Leo Taylor, filed a claim for benefits on January 26, 1999, and died on April 5, 2000. Director's Exhibits 1, 25. Claimant filed a survivor's claim on July 14, 2000, and the two claims were consolidated for hearing and decision. Director's Exhibits 1, 55-57.

²Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, filed an appeal on behalf of claimant, but is not representing her on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

and 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).³ The administrative law judge credited the miner with over fifteen years of qualifying coal mine employment based on the stipulation of the parties, but found that the evidence of record was insufficient to establish the existence of pneumoconiosis under the regulations at 20 C.F.R. Part 718. Accordingly, benefits were denied on both claims.

On appeal, claimant generally challenges the administrative law judge's denial of benefits in both claims. Employer responds, urging affirmance. The Director, Office of Worker' Compensation Appeals (the Director), has declined to participate in this appeal.

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).

³The 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 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

In order to establish entitlement to benefits in the miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner suffered from pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis was totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to prove any of these requisite elements compels a denial of benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Additionally, in order to establish entitlement to survivor's benefits in a claim filed on or 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 suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 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). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 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).⁴

⁴This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner was last employed in the coal mine industry in the Commonwealth of Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 2.

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence, consistent with applicable law, and must be affirmed. The administrative law judge properly found that the evidence of record was insufficient to establish either clinical or legal pneumoconiosis under the regulatory definition thereof. *See* 20 C.F.R. §718.201; *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); Decision and Order at 3. The administrative law judge accurately determined that none of the x-ray or CT scan evidence of record was interpreted as positive for pneumoconiosis, and thus claimant could not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Decision and Order at 3; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Trent, supra*; *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). The requirements of Section 718.202(a)(2) were not met because the record contains no autopsy or lung biopsy evidence, and claimant was precluded from establishing the existence of pneumoconiosis under Section 718.202(a)(3) in this case, as none of the presumptions set forth thereunder applies.⁵ Lastly, claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), as the administrative law judge correctly determined that the medical reports of record, including those from Dr. Forehand,⁶ who treated the miner for his breathing problems, and Dr. Chaudhry,⁷ the miner's primary

⁵The record does not contain any evidence of complicated pneumoconiosis, and, consequently, claimant does not qualify for the presumption under 20 C.F.R. §718.304. Further, the presumptions at 20 C.F.R. §§718.305 and 718.306 are inapplicable in this case since the miner died after March 1, 1978, and both claims were filed after January 1, 1982. *See Langerud v. Director, OWCP*, 9 BLR 1-101 (1986).

⁶Dr. Forehand explicitly found no evidence of pneumoconiosis and diagnosed chronic bronchitis attributable to cigarette smoking. Director's Exhibit 9.

⁷Dr. Chaudhry completed the miner's death certificate, indicating that the immediate cause of death was cardiopulmonary arrest due to lung cancer, chronic obstructive pulmonary disease, heart disease and diabetes, with arthritis as another significant condition contributing to death. Director's Exhibit 25. Because Dr. Chaudhry did not specify whether any of the diagnosed causes of death arose out of dust exposure in coal mine employment, however, those conditions do not satisfy the regulatory definition of pneumoconiosis. 20 C.F.R. §718.201; *see generally Nance v. Benefits Review Board*, 861 F.2d 68, 12 BLR 2-31 (4th Cir. 1988). Dr. Chaudhry's office notes, hospital admission and discharge summaries similarly fail to affirmatively document a causal nexus between the miner's diagnosed conditions and his coal dust exposure, although Dr. Chaudhry's December 23, 1999 discharge summary indicates that the miner's lung cancer could either be "a primary lung carcinoma from cigarette smoking or as metastases from bladder carcinoma with bone metastases and lung metastases." Director's Exhibit 43. While an unsigned office note dated November 30, 1998, indicates under the heading "subjective" that "[p]atient has a hx of pneumoconiosis

care physician, did not include a diagnosis of pneumoconiosis nor any respiratory or pulmonary impairment related to dust exposure in coal mine employment.⁸ 20 C.F.R. §718.201; Decision and Order at 3; Director’s Exhibits 9, 25, 43; Employer’s Exhibit 9. The administrative law judge rationally concluded that since claimant was unable to demonstrate the presence of pneumoconiosis, she was precluded from establishing that the miner was disabled by pneumoconiosis or that his death was hastened by pneumoconiosis. Decision and Order at 3; *see Anderson, supra; Shuff, supra*. Consequently, we affirm the administrative law judge’s denial of benefits in both claims.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

and black lung,” there is no basis in the record to support this entry as an independent, documented diagnosis. Director’s Exhibit 43.

⁸The remaining medical reports of record either affirmatively attributed the miner’s diagnosed pulmonary conditions to smoking or were silent regarding etiology. Director’s Exhibits 14, 43; Employer’s Exhibit 9.

PETER A. GABAUER, Jr.
Administrative Appeals Judge