

BRB No. 02-0239 BLA

WILLODEAN AARON)
(Widow of WARREN AARON))
)
 Claimant-Petitioner))
)
 v.)
)
ALABAMA BY-PRODUCTS)
CORPORATION)
)
 Employer-Respondent) DATE ISSUED:
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR))
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision On Petition For Modification of Robert J. Lesnick, Administrative Law Judge, United States Department of Labor.

Willodean Aaron, Jasper, Alabama, *pro se*.

Laura A. Woodruff (Maynard, Cooper & Gale, P.C.), Birmingham, Alabama, for employer.

Helen H. Cox (Eugene Scalia, 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 Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant¹, without the assistance of counsel, appeals the Decision On Petition For Modification (00-BLA-0354) of Administrative Law Judge Robert J. Lesnick 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).² This case has previously been before the Board. A claim for black lung benefits was originally filed by the miner on June 8, 1978. That claim was administratively denied, and claimant did not further pursue the claim. On January 17, 1985, the miner died. Director's Exhibit 4. Thereafter, on January 22, 1985, claimant filed a claim for survivor's benefits. The claim was administratively denied on May 15, 1985, and was subsequently referred to the Office of Administrative Law Judges for a formal hearing. With this action, claimant triggered a series of adjudications before the Office of Administrative Law Judges, the Benefits Review Board, and the United States Court

¹ Claimant is the surviving spouse of the deceased miner who died on January 17, 1985. Director's Exhibit 4.

²The 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 (2000). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

of Appeals for the Eleventh Circuit. The adjudication of the survivor's claim at various levels over a fourteen-year period has repeatedly resulted in denials of benefits.³

Following the Board's affirmance of Administrative Law Judge James W. Kerr's denial of benefits upon the Board's second review of the claim, *Aaron v. Alabama By-Products Corp.*, BRB No. 96-0124 BLA (May 30, 1996) (unpublished), claimant filed a request for modification. When this request was referred to the Office of Administrative Law Judges, the request was denied, as was claimant's request for reconsideration. On appeal, the Board affirmed Judge Kerr's denial of both the request for modification and the request for reconsideration. *Aaron v. Alabama By-Products Corp.*, BRB No. 97-0861 BLA (Feb. 19, 1998) (unpublished). Claimant then twice requested that the Board reconsider its affirmance of Judge Kerr's denial of benefits. The Board summarily denied both requests on March 25, 1998 and May 6, 1998. While claimant's requests for reconsideration were pending with the Board, she also filed a request with the Office of Workers' Compensation Programs, seeking modification of Judge Kerr's Decision and Order. Thereafter, on July 20, 1998, when claimant sought further consideration of her claim, the Board treated her request as an appeal and forwarded the case to the United States Court of Appeals for the Eleventh Circuit. On August 17, 1999, the Eleventh Circuit issued an order dismissing the appeal as having been untimely filed. *Aaron v. Alabama By-Products Corp.*, No.

³ A prior Decision and Order by the Board in this case spells out its lengthy procedural and substantive history. *Aaron v. Alabama By-Products Corp.*, BRB No. 96-0124 BLA (May 30, 1996) (unpublished). This determination, along with the Board's initial review of this claim, *Aaron v. Alabama By-Products Corp.*, BRB No. 88-3263 BLA (Apr. 30, 1991)(unpublished), provide in-depth analyses of Administrative Law Judge James W. Kerr's treatment of the evidence in this case. In both instances, the Board affirmed Judge Kerr's denial of survivor's benefits. Therefore, we need not reiterate all of the procedural and substantive actions taken in this case. We begin our chronology of the adjudication of this claim following the Board's 1996 Decision and Order.

98-6696 (11th Cir. Aug. 17, 1999) (per curiam). Based on the statement received from the Office of Workers' Compensation Programs that it has no authority to modify an administrative law judge's Decision and Order, claimant requested a new hearing and the claim was referred to the Office of Administrative Law Judges. On November 29, 2001, Administrative Law Judge Robert J. Lesnick (the administrative law judge) issued the Decision On Petition For Modification which is the subject of the instant appeal. Therein, the administrative law judge concluded that, based on his review of the record and the previous decisions issued by Judge Kerr, no mistake of fact had been made in the adjudication of the claim. Decision and Order at 6.

On appeal, claimant generally contests the administrative law judge's refusal to grant her request for modification of Judge Kerr's denial of survivor's benefits. Employer responds, urging affirmance of the Decision and Order denying benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a statement indicating that he will not file a brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and the conclusions of law are rational, supported by substantial evidence, and in accordance with the law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). In a survivor's claim filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis arising out of coal mine employment, or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis, and that the pneumoconiosis arose out of coal mine employment. 20 C.F.R. §§718.205(c), 718.202, 718.203; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87; *Neeley v. Director, OWCP*, 11 BLR 1-85, 1-86 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

The administrative law judge reviewed the numerous stages of adjudication in this case, noting the various times that the substantive issues in this case were addressed by the Office of Workers' Compensation Programs, Administrative Law Judge James W. Kerr, and by the Benefits Review Board. The administrative law judge further acknowledged that a claimant may file an "infinite number of modification petitions in a single claim." Decision and Order at 5. Finally, the administrative law judge properly noted that, inasmuch as this is a survivor's claim, the sole ground for modification available to claimant is to establish a mistake in a determination of fact. See 20 C.F.R. §725.310 (2000). The administrative law judge

concluded that, after having reviewed the evidence of record and the decisions of Judge Kerr, there was no mistake in a determination of fact in the adjudication of the claim. Decision and Order at 6. We agree.

This case has been presented numerous times before different tribunals. In the Board's most recent review of this claim, it held that:

[t]he administrative law judge, in the instant case rationally determined that the prior evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) and therefore insufficient to establish modification pursuant to 20 C.F.R. §725.310. *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). [Citation omitted] Considering the newly submitted evidence of record, the death certificate... the administrative law judge permissibly accorded more weight to the prior medical opinions stating that there was no causal connection between the miner's death and pneumoconiosis as the opinions were offered by more qualified medical professionals.... *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989).

Aaron v. Alabama By-Products Corp., BRB No. 97-0861 BLA (Feb. 19, 1998) (unpublished). Our review of the case pursuant to the instant appeal presents no new issue that would cause the Board to reflect further upon its prior holding. The administrative law judge, properly determined that no mistake of fact was made in the adjudication of this claim. *See* 20 C.F.R. §725.310 (2000). Further, the administrative law judge's Decision and Order comports with the requirements of the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §921(b)(3), and 30 U.S.C. §932(a), in that the determination is based upon sufficient analysis and findings of fact to demonstrate that all the relevant evidence of record was weighed. Inasmuch as the administrative law judge's Decision and Order is rational, supported by substantial evidence, and in accordance with the law, we affirm his denial of claimant's request for modification. *See O'Keefe, supra*.

Accordingly, the administrative law judge's Decision On Petition For Modification denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge