

BRB No. 13-0311 BLA

ROSE MARIE KREIDER)
(Surviving Daughter of CARL GABRIEL)
KAMIONKA))
)
Claimant-Petitioner)
) DATE ISSUED: 04/11/2014
v.)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent) DECISION and ORDER

Appeal of the Decision and Order of Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

George E. Mehalchick (Lenaham & Dempsey, P.C.), Scranton, Pennsylvania, for claimant.

Rebecca J. Fiebig (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (11-BLA-5964) of Administrative Law Judge Lystra A. Harris denying benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). Claimant filed a claim for survivor's benefits on July 29, 2010.² The administrative law judge

¹ Claimant is the surviving daughter of the miner, who died on February 12, 1987. Director's Exhibit 6.

denied the claim because she found that claimant did not establish her eligibility for survivor's benefits.

On appeal, claimant argues that the administrative law judge erred in finding that she did not satisfy the eligibility requirements under the Act. The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's denial of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.³ 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).

Claimant argues that the administrative law judge erred in finding that she did not establish her eligibility for survivor's benefits. A child of a deceased miner is entitled to benefits if the relationship and dependency requirements are met. 20 C.F.R. §§725.218-725.221. Because the Director conceded that claimant satisfied the relationship requirement, the sole issue before the administrative law judge was whether claimant satisfied the dependency requirement.

The administrative law judge noted the regulations provide, that "[f]or the purpose of determining whether a child was dependent upon a deceased miner, the provisions of [20 C.F.R.] §725.209 shall be applicable" 20 C.F.R. §725.221. Section 725.209(a) provides that a child will be considered to have been dependent upon the deceased miner if the child "(1) [i]s unmarried; and (2)(i) is under 18 years of age; or (ii) is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d); or (iii) [i]s 18 years of age or older and is a student." 20 C.F.R. §725.209(a) (emphasis

² The miner filed a claim for benefits on January 6, 1970, and was awarded benefits thereafter, until his death on February 12, 1987. Director's Exhibit 1. The miner's widow received survivor's benefits following the miner's death until her death on May 9, 2000. Neither the miner's benefits nor the widow's survivor's benefits were augmented on account of claimant.

³ Although the record does not reflect the last state in which the miner worked in coal mine employment, the Board will apply the law of the United States Court of Appeals for the Third Circuit, as the record reflects that the miner lived and received medical care in Pennsylvania, and applied for Pennsylvania state workers' compensation benefits. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 4, 6, 16; Director's Brief at 1 n.1.

added). In order to satisfy the disability provision, such disability “must have begun before the child attained age 22” *See* 20 C.F.R. §725.221. The administrative law judge noted that the Director conceded that claimant satisfied the disability requirement set forth at 20 C.F.R. §725.209(a)(2)(ii). Decision and Order at 4. Thus, the sole remaining issue before the administrative law judge was whether claimant satisfied the “unmarried” eligibility requirement for establishing her dependency on the deceased miner.

The administrative law judge noted that Section 725.227 provides that the determination, as to whether an individual purporting to be an entitled survivor of a miner was dependent upon the miner, “is based on the facts and circumstances with respect *to a reasonable period of time ending with the miner’s death.*” 20 C.F.R. §725.227 (emphasis added). The administrative law judge, therefore, considered, not whether claimant was unmarried at the time she filed her claim, but whether claimant was unmarried for a reasonable period of time prior to the miner’s death. Because claimant was continuously married from October 27, 1979 to February 12, 1987, the date of the miner’s death, the administrative law judge found that claimant failed to demonstrate that she was “unmarried” for a reasonable period of time prior to the miner’s death.⁴ Decision and Order at 5. Because claimant could not satisfy the dependency requirement, the administrative law judge determined that claimant is not entitled to benefits.

The Director contends that claimant’s reliance upon her current “unmarried” status does not assist her in satisfying the dependency requirement. Because a child’s unmarried status is a requirement for establishing dependency upon a deceased miner, 20 C.F.R. §§725.209(a); 725.221, the Director asserts that a child, in order to satisfy the dependency requirement, must initially demonstrate that he or she was unmarried for “a reasonable period of time ending with the miner’s death.”⁵ 20 C.F.R. §725.227. We agree with the Director’s position. Since the Director is charged with administration of the Act, deference is generally granted to his position on issues involving the interpretation or application of the Act. *Webber v. Peabody Coal Co.*, 23 BLR 1-123, 1-132 (2006) (en banc) (Boggs, J., concurring), *aff’d on recon.*, 24 BLR 1-1 (2007) (en banc); *see also Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-45 (1984); *Cadle v. Director, OWCP*, 19 BLR 1-55, 1-62 (1994).

⁴ The administrative law judge noted that claimant had also been previously married from July 20, 1968 to June 6, 1978. Decision and Order at 4.

⁵ If a disabled adult child satisfies the dependency requirements at the time of the miner’s death, a later marriage would terminate the child’s entitlement to benefits. However, the disabled child could have the benefits reinstated upon the end of the intervening marriage. *See* 20 C.F.R. §725.219(d); *Adler v. Peabody Coal Co.*, 22 BLR 1-43 (2000).

Because of the unqualified requirement that a claimant be “unmarried” to receive benefits as a dependent surviving child, the administrative law judge properly found that she was not required to make a factual inquiry into whether claimant was financially dependent on the miner prior to his death. *Sullenburger v. Director, OWCP*, 22 BLR 1-54, 1-59 (2000). Likewise, the fact that claimant was separated from her second husband at the time of the miner’s death is irrelevant for purposes of determining claimant’s dependency.⁶ As the Director accurately notes, the “regulations condition entitlement on whether or not the child is *married*; there is no exception for legal separation.” Director’s Brief at 2.

We conclude that the administrative law judge properly determined that that the record fails to demonstrate claimant’s eligibility as a dependent surviving child of the deceased miner. Because claimant did not establish that she is an eligible survivor of the deceased miner, she is not entitled to benefits under the Act. 20 C.F.R. §§725.209(a), 725.221.

⁶ Claimant testified that she separated from her second husband in January 1980, and that they remained separated until his death in 2007. Hearing Transcript at 9-10, 15.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge