

BRB No. 10-0307 BLA

FRANCES L. GARCIA-RUOTTINEN )  
(Surviving Daughter of NESTOR GARCIA, )  
deceased miner) )  
)  
Claimant-Petitioner )  
)  
v. )  
)  
DIRECTOR, OFFICE OF WORKERS' ) DATE ISSUED: 01/31/2011  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
)  
Respondent ) DECISION and ORDER

Appeal of the Order Denying Benefits of William S. Colwell, Associate Chief Administrative Law Judge, United States Department of Labor.

Frances L. Garcia-Ruottinen, Fresno, California, *pro se*.

Jeffrey S. Goldberg (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:

Claimant appeals, without the assistance of counsel, the Order Denying Benefits (2008-BLA-5152) of Associate Chief Administrative Law Judge William S. Colwell, rendered on a survivor's claim filed on July 25, 2007, by the adult daughter of a deceased miner, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010)(to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act).<sup>1</sup> The administrative law judge denied the

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<sup>1</sup> The miner died on April 4, 1968. There is no evidence in the record that he filed a claim for benefits.

claim for survivor's benefits on the ground of abandonment pursuant to 20 C.F.R. §725.409(a). Alternatively, the administrative law judge found that the claim would be denied because claimant did not establish her eligibility for survivor's benefits under the Act.

On appeal, claimant generally challenges the administrative law judge's denial of benefits, asserting that she meets the requirements for eligibility under the Act. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits. The Director asserts that the administrative law judge properly concluded that the district director's determination, that the claim was abandoned, was proper, and that, in any case, the claim must be denied because the administrative law judge properly found that claimant failed to meet any of the eligibility requirements under the Act.

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 Co.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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. An adult child satisfies the dependency requirement if the child is unmarried *and* is either under the age of eighteen or under a disability that was determined before the age of twenty-two, or is a full-time student. 20 C.F.R. §§725.218-725.221.

In this case, substantial evidence supports the administrative law judge's findings that claimant is not unmarried, is not under the age of eighteen years, and is not disabled. Order at 1, 2. Claimant, who attended the hearing with her husband, apparently seeks to argue that she is eligible as a dependent child under the Act because she was not married before the age of eighteen. *See* Order at 2; Claimant's Exhibit 4; Hr. Tr. at 14, 8, 22. However, the regulations clearly require that, in order to be an eligible dependent, a surviving child must be unmarried *and* either under the age of eighteen and or have become disabled before the age of twenty-two. 20 C.F.R. §§725.218-725.221. 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.<sup>2</sup> Because claimant did not establish that she is an eligible survivor of the deceased

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<sup>2</sup> We accept the position of the Director, Office of Workers' Compensation Programs (the Director), that the Department of Labor form, CM-1025, listing the issues

miner, she is not entitled to benefits under the Act.<sup>3</sup> We, therefore, affirm the administrative law judge's conclusion that the claim must be denied on this basis. Moreover, because claimant has failed to establish that she is an eligible survivor of the miner, we agree with the Director that we need not determine whether this case is affected by the amendments to the Black Lung Benefits Act contained in the Patient Protection and Affordable Care Act, Pub. Law No. 111-148, §1556 (2010).<sup>4</sup>

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contested before the administrative law judge, provided the Director's written agreement for the administrative law judge to consider claimant's eligibility for benefits pursuant to 20 C.F.R. §725.409(c). *See* Director's Brief at 5-6; Director's Exhibit 19 at 2.

<sup>3</sup> Because we affirm the administrative law judge's denial of benefits on the ground that claimant failed to establish her eligibility under the Act, *see* 20 C.F.R. §§725.218, 725.219, we need not consider the administrative law judge's denial of the claim on the ground of abandonment. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

<sup>4</sup> Further, pursuant to 20 C.F.R. §725.503(c), even if claimant could establish eligibility to benefits during the time period when she was under the age of eighteen and unmarried, benefits on a survivor's claim are payable only from the month of the miner's death, or January 1, 1974, whichever is later. Since the miner died prior to January 1974, and claimant had reached the age of eighteen by 1969, benefits would not be payable. 20 C.F.R. §725.503(c).

Accordingly, the administrative law judge's 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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BETTY JEAN HALL  
Administrative Appeals Judge