



BRB No. 25-0001 BLA

GRACIE KIDD )  
(Widow of ARNOLD KIDD) )  
) )  
Claimant-Petitioner )  
) )  
v. )  
) )  
RANGER FUEL CORPORATION )  
) )  
Employer-Respondent )  
) )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
) )  
Party-in-Interest )

**NOT-PUBLISHED**

DATE ISSUED: 02/27/2026

DECISION and ORDER

Appeal of the Order of Dismissal of William P. Farley, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Cameron Blair (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for Employer.

Victoria Yee (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, JONES and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals Administrative Law Judge (ALJ) William P. Farley’s Order of Dismissal (2021-BLA-05279) rendered on a subsequent survivor’s claim filed on May 8, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for a second time.

Claimant filed her initial survivor’s claim on March 14, 2017, and the district director denied it by reason of abandonment on July 26, 2017, as she failed to provide documentation essential for processing the claim or to respond to an Order to Show Cause. Subsequently, she filed the current claim which the district director denied on September 2, 2020, for failure to establish the Miner had pneumoconiosis or that his death was due to pneumoconiosis. Claimant requested a hearing and the case was assigned to the ALJ. On March 30, 2022, the ALJ granted Employer’s Motion to Dismiss the case because the prior denial by reason of abandonment was “a final judgement on the merits” and Claimant did not establish a change in an applicable condition of entitlement. March 30, 2022 Order at 3.

Pursuant to Claimant’s appeal, the Board held the ALJ erroneously determined Claimant could not establish a change in an applicable condition of entitlement based upon case law applying a prior regulation that mandated automatic denial of all subsequent survivors’ claims. *Kidd v. Ranger Fuel Corp.*, BRB No. 22-0312 BLA, slip op. at 3-4 (Jan. 18, 2024) (unpub.). Because the current applicable regulation allows subsequent survivors’ claims to be considered if the survivor can establish a change in an applicable condition unrelated to the miner’s physical condition at the time of his death, the Board remanded the case for the ALJ to consider whether Claimant had established a change in one of the applicable conditions of entitlement unrelated to the Miner’s physical condition and, if so, to consider the merits of her claim. *Id.* at 6.

On remand, the ALJ again dismissed the case because he found Claimant failed to establish a change in an applicable condition of entitlement.

On appeal, Claimant argues the ALJ erred in finding she did not establish a change in an applicable condition of entitlement by establishing she is unmarried—a condition she failed to establish in her initial claim—and thus erred in dismissing her subsequent claim. Employer responds in support of the ALJ’s dismissal of the claim. The Director, Office of Workers’ Compensation Programs, responds in agreement with Claimant’s argument that

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<sup>1</sup> Claimant is the widow of the Miner, who died on December 1, 2015. Director’s Exhibit 12. Because the Miner never established entitlement to benefits during his lifetime, Claimant is not eligible for derivative survivor’s benefits under Section 422(l) of the Act, 30 U.S.C. §932(l) (2018).

she established a change in an applicable condition of entitlement and requests that the Order dismissing the case be vacated. Claimant filed a reply, reiterating her contentions.

The Board's scope of review is defined by statute. We must affirm the ALJ's Order if it is rational, supported by substantial evidence, and in accordance with applicable law.<sup>2</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Claimant and the Director argue Claimant is entitled to consideration of her claim on the merits because she has established a change in an applicable condition of entitlement unrelated to the Miner's physical condition by proving she is unmarried. Claimant's Brief at 10-17; Director's Response at 5-8; Claimant's Reply at 2-4. We agree.

A subsequent survivor's claim, filed more than one year after the effective date of a final order denying survivor's benefits, must be denied unless new evidence establishes a change in an "applicable condition of entitlement" unrelated to the miner's physical condition at the time of his death. 20 C.F.R. §725.309(c)(4); *see Boden v. G.M. & W. Coal Co.*, 23 BLR 1-39, 1-40 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant's initial claim was denied as abandoned. Director's Exhibit 2. A denial by reason of abandonment "shall be deemed a finding that the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409(c). One condition of entitlement Claimant was required to establish in her prior claim was that she was unmarried, and she failed to do so because the district director denied that claim as abandoned. Thus, she can establish a change in an applicable condition of entitlement unrelated to the Miner's physical condition in her subsequent claim if she proves she is not currently married.<sup>3</sup> 20 C.F.R. §§725.212(a)(1), 725.309(c)(3), 725.409(c); *Kidd*, BRB No. 22-0312 BLA, slip op. at 4.

Claimant submitted her marriage certificate and an affidavit stating she married the Miner in 1951 and has not remarried since his death. Director's Exhibit 9; Affidavit of

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<sup>2</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

<sup>3</sup> The applicable conditions of entitlement for a surviving spouse are that 1) the surviving spouse is unmarried; 2) the spouse was dependent on the miner at the relevant time; and 3) the miner's death was due to pneumoconiosis or the miner was awarded benefits and the surviving spouse is eligible for automatic entitlement under Section 422(I) of the Act. 20 C.F.R. §725.212(a)(1)-(3).

Gracie Kidd at 1. The ALJ found the affidavit establishes Claimant is unmarried and has been since the time of her initial claim. Order of Dismissal at 5. Based on that finding, he determined there has been no actual change in Claimant's marital status since the prior denial and she therefore has not established a change in an applicable condition of entitlement. *Id.* at 5-6. This was error.

In *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358 (4th Cir. 1996) (en banc), interpreting the former version of 20 C.F.R. §725.309, the Fourth Circuit explained that a prior final determination that a claimant was not entitled to benefits, and “its necessary factual underpinning” at that time, must be accepted as legally correct when the ALJ assesses whether a claimant pursuing a subsequent claim has established an element of entitlement that was previously adjudicated against her. 86 F.3d at 1360-62; *see also Consol. Coal Co. v. Williams*, 453 F.3d 609, 615-16 (4th Cir. 2006). The Department of Labor later revised 20 C.F.R. §725.309 to codify *Rutter's* “single element” standard for adjudicating subsequent claims. 65 Fed. Reg. 79,920, 79,968 (Dec. 20, 2000); *Kidd*, BRB No. 22-0312 BLA, slip op. at 5 n.4. Thus, as stated in our prior decision, we must accept as correct the previous determination that Claimant failed to establish she was unmarried as a matter of res judicata despite what she stated on her benefits claim forms or any evidence she may have had in her possession but did not submit at the time of the prior denial.<sup>4</sup> *Rutter*, 86 F.3d at 1360-62; *accord U.S. Steel Mining Co., LLC v. Dir., OWCP [Jones]*, 386 F.3d 977, 989 (11th Cir. 2004) (“[T]he ‘one element’ test does not compel a comparison of the evidence associated with the second claim with the evidence presented at the first claim; rather, it mandates a comparison of the second claim’s evidence with the conclusions reached in the prior claim.”); *Kidd*, BRB No. 22-0312 BLA, slip op. at 5. The ALJ therefore erred in failing to accept the correctness of the previous determination that Claimant failed to establish she is unmarried and compare the new evidence in the subsequent claim with that previous determination.

Because the ALJ found Claimant is unmarried and that condition of entitlement was previously adjudicated against her, she has established a change in an applicable condition of entitlement unrelated to the Miner’s physical condition at the time of his death, 20 C.F.R.

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<sup>4</sup> Employer urges the Board to reconsider its holding that the ALJ must accept the correctness of the prior denial and compare the evidence in this claim with the conclusions reached in the prior claim, including that Claimant failed to establish that she was unmarried. Employer’s Brief at 11-13. Because Employer has not shown the Board’s decision was clearly erroneous or set forth any other valid exception to the law of the case doctrine, we decline to disturb the Board’s prior disposition. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988, 1-989-90 (1984).

§725.309(c)(4), and she is therefore entitled to consideration of her claim on the merits.<sup>5</sup> 20 C.F.R. §725.309(c)(5) (“none of the findings made in connection with the prior [denied] claim,” including those relating to the miner’s physical condition, “will be binding on any party in the adjudication of the subsequent claim”). Furthermore, reversal is warranted where no factual issues remain to be determined and no further factual development is necessary. *See Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 187 (4th Cir. 2014); *Adams v. Director, OWCP*, 886 F.2d 818, 826 (6th Cir. 1989).

We therefore reverse the ALJ’s finding that Claimant failed to establish a change in an applicable condition of entitlement and vacate the ALJ’s Order dismissing the subsequent survivor’s claim. On remand, the ALJ must consider the subsequent claim on the merits.

Accordingly, we reverse in part and vacate the ALJ’s Order of Dismissal and remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

GLENN E. ULMER  
Acting Administrative Appeals Judge

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<sup>5</sup> We need not address, therefore, Claimant’s or the Director’s arguments that Claimant has established additional conditions of entitlement unrelated to the miner’s physical condition. Claimant’s Brief at 10-13; Director’s Brief at 6-7. Further, we need not address Claimant’s arguments that her subsequent claim must be considered on its merits because of the remedial nature of the Act, the interests of fairness, and the passage of the Affordable Care Act. Claimant’s Brief at 14-17.