



BRB No. 19-0388 BLA

DRUCILLA HENSLEY )  
(Widow of ANTHONY HENSLEY) )

Claimant-Petitioner )

v. )

RIDGETOP MINING, INCORPORATED )

and )

AMERICAN RESOURCES INSURANCE )  
COMPANY )

DATE ISSUED: 07/31/2020

Employer/Carrier- )  
Respondents )

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 in a Subsequent Survivor's Claim of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan P.S.C.), South Williamson, Kentucky, for Claimant.

Thomas L. Ferreri and Matthew J. Zanetti (Ferreri Partners, PLLC), Louisville, Kentucky, for Employer/Carrier.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals Administrative Law Judge Steven D. Bell's Decision and Order Denying Benefits in a Subsequent Survivor's Claim (2018-BLA-05196) filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent survivor's claim filed on June 13, 2017.<sup>2</sup>

The administrative law judge denied Claimant's subsequent survivor's claim because he found she did not establish a change in an applicable condition of entitlement since the denial of her first survivor's claim. 20 C.F.R. §725.309(c)(4).

On appeal, Claimant contends the administrative law judge erred in not addressing whether she is entitled to the Section 411(c)(4) presumption that the Miner's death was due to pneumoconiosis. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Benefit Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law. 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).

The grounds for establishing entitlement to benefits in a subsequent survivor's claim are limited. Claimant must show one of the "applicable conditions of entitlement" has changed since her prior survivor's claim was denied. Those conditions of entitlement must include at least one issue "unrelated to the miner's physical condition at the time of his

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<sup>1</sup> Claimant is the surviving spouse of the Miner who died on May 11, 2006. Director's Exhibit 1 at 17.

<sup>2</sup> Claimant filed an initial claim for survivor's benefits on June 26, 2006, which the district director denied on February 26, 2007 because the evidence did not establish the Miner's death was due to pneumoconiosis. Director's Exhibit 1 at 5-8; 20 C.F.R. §718.205(b). Claimant filed a second survivor's claim on February 2, 2016. Director's Exhibit 2. The district director denied the claim on March 22, 2016 because Claimant failed to establish a change in an applicable element of entitlement. *Id.*

death.” 20 C.F.R. §725.309(c)(4); *Moser v. Director, OWCP*, 25 BLR 1-97, 1-99 (2013); *Boden v. G.M. & W. Coal Co.*, 23 BLR 1-39, 1-40 (2004); *Watts v. Peabody Coal Co.*, 17 BLR 1-68, 1-70-71 (1992). The administrative law judge determined correctly that the condition of entitlement that Claimant failed to demonstrate in her initial survivor’s claim, that the Miner’s death was due to pneumoconiosis, related solely to the Miner’s physical condition at the time of his death. Decision and Order at 3; Director’s Exhibit 1. Thus, the administrative law judge properly found an award of benefits in Claimant’s subsequent survivor’s claim was precluded under 20 C.F.R. §725.309(c)(4). *See Moser*, 25 BLR at 1-99; *Boden*, 23 BLR at 1-41; *Watts*, 17 BLR at 1-70-71; Decision and Order at 4.

Accordingly, the administrative law judge’s Decision and Order Denying Benefits in a Subsequent Survivor’s Claim is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge