

BRB No. 07-0715 BLA

N.H.)	
(Survivor of W.H.))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	DATE ISSUED: 04/29/2008
CORPORATION)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Granting Employer's Motion for Summary Judgment of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

N.H., Kopperston, West Virginia, *pro se*.

Paul E. Frampton (Bowles, Rice, McDavid, Graff & Love), Charleston, West Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Granting Employer's Motion for Summary Judgment (2006-BLA-5988) of Administrative Law Judge Daniel L. Leland denying benefits on a subsequent survivor's claim¹ filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and

¹ The record indicates that the miner filed a claim for benefits on April 1, 1985, which was denied by an administrative law judge on June 21, 1989, due to the miner's

Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge denied this subsequent survivor's claim in accordance with 20 C.F.R. §725.309(d), as he found that claimant failed to establish a change in an applicable condition of entitlement.

On appeal, claimant generally contends that she is entitled to benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as a matter of law. The Director, Office of Workers' Compensation Programs, has declined to file a brief in this case.

In an appeal by a claimant proceeding without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Co.*, 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 conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hichman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The regulations provide that a subsequent claim, filed more than one year after the effective date of a final order denying a survivor's claim, must be denied unless the claimant demonstrates that one of the applicable conditions of entitlement has changed since the date upon which the order denying the prior claim became final. 20 C.F.R. §725.309(d). A subsequent claim filed by a surviving spouse shall be denied unless the applicable conditions of entitlement at 20 C.F.R. §725.212 include at least one condition unrelated to the miner's physical condition at the time of his death. 20 C.F.R. §725.309(d)(3); *see generally Boden v. G.M. & W. Coal Company, Inc.*, 23 BLR 1-39 (2004); *Watts v. Peabody Coal Co.*, 17 BLR 1-68 (1992).

In the present case, the record indicates that claimant's first claim, filed on February 19, 1998, was finally denied by the district director on August 17, 1998, because claimant failed to establish that the miner suffered from pneumoconiosis, that pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. Claimant filed a timely request for modification which was denied on December 21, 1998. Claimant filed her second survivor's claim on June 11, 2001, which was denied by the district director as a subsequent claim on May 12, 2003, because

failure to establish total disability pursuant to 20 C.F.R. §718.204(c)(2000). The miner died on March 31, 1994, and claimant, the miner's widow, filed her first survivor's claim on February 19, 1998. Director's Exhibit 1.

claimant failed to demonstrate a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). A third survivor's claim was filed by claimant on October 5, 2005, and was denied by the district director as a subsequent survivor's claim on April 17, 2006. At claimant's request, the case was forwarded to the Office of Administrative Law Judges for a formal hearing. Employer filed a Motion for Summary Judgment on March 21, 2007. Because the conditions of entitlement that claimant failed to demonstrate in her initial claim related solely to the miner's physical condition at the time of his death, *i.e.*, whether the miner suffered from pneumoconiosis and whether his death was due to pneumoconiosis, the administrative law judge properly found that entitlement was precluded. Decision and Order at 2; 20 C.F.R. §725.309(d)(3). As the administrative law judge's findings pursuant to Section 725.309(d)(3) are in accordance with law, we affirm the denial of survivor's benefits.

Accordingly, the administrative law judge's Decision and Order Granting Employer's Motion for Summary Judgment is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge