

BRB No. 97-1090 BLA

RUTH PHILLIPPI)	
(Widow of FRED PHILLIPPI))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Kenneth W. Johnson, Rockwood, Pennsylvania, for claimant.

Mark V. Swirsky (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, widow of the deceased miner¹, appeals the Decision and Order (96-BLA-1685) of Administrative Law Judge Daniel L. Leland denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. § 901 *et seq.* (the Act). This claim involves a duplicate claim. Claimant's previous survivor's claim was denied by the district director on June 15, 1993 and November 26, 1993. Director's Exhibit 13. There was no appeal filed or a request for

¹ The miner died on December 13, 1992. Director's Exhibit 3.

modification within one year of the denial. Claimant filed the instant claim on September 7, 1995. Director's Exhibit 1.

In the instant Decision and Order, the administrative law judge found that claimant's second claim is not a petition for modification pursuant to 20 C.F.R. §725.310, but is instead a duplicate claim, as it was filed over twenty-one months after claimant's initial claim was denied, and must therefore be denied pursuant to 20 C.F.R. §725.309. Decision and Order at 2. On appeal, claimant contends that the administrative law judge erred in finding that claimant is precluded from filing a duplicate claim pursuant to Section 725.309. The Director, Office of Workers' Compensation Programs, responds urging affirmance of the denial.

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 are 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).

Section 725.309(d) provides that a duplicate survivor's claim must be denied on the basis of the earlier claim unless the latter claim is a request for modification and the requirements of Section 725.310 are met (i.e., the subsequent claim is filed within one year of the last denial of the earlier claim). *See* 20 C.F.R. §§725.309(d), 725.310; *Watts v. Peabody Coal Co.*, 17 BLR 1-68 (1992); *Mack v. Matoaka Kitchehan Fuel*, 12 BLR 1-197 (1989).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Claimant's initial survivor's claim was denied June 15, 1993 and November 26, 1993. Director's Exhibit 13. Claimant filed her second claim on September 7, 1995. Director's Exhibit 1. Because the second claim was filed over one year after the denial of the first survivor's claim, the administrative law judge properly found that the second survivor's claim must be denied as a duplicate claim pursuant to Section 725.309(d). *See Watts, supra; Mack, supra.* Thus, we affirm the administrative law judge's denial of benefits on claimant's second survivor's claim as it is supported by substantial evidence and in accordance with law.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge