

BRB No. 98-0760 BLA

VERTURIA RAE QUIGGINS )  
(Widow of JAMES QUIGGINS) )  
 )  
Claimant-Petitioner ) ) DATE ISSUED: 4/17/99  
 )  
v. )  
 )  
OLD BEN COAL COMPANY )  
 )  
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-Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Verturia Rae Quiggins, Fort Branch, Indiana, *pro se*.

Mark E. Solomons (Arter & Hadden LLP), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order-Denying Benefits (95-BLA-2178) of Administrative Law Judge Rudolf L. Jansen, on a survivor's 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). The administrative law judge credited the miner with eleven and three-quarter years of coal mine employment and found that while the existence of pneumoconiosis arising

out of coal mine employment was established pursuant to 20 C.F.R. §§718.202(a)(2) and 718.203(b), claimant failed to establish that pneumoconiosis caused, contributed to, or hastened the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant challenges the administrative law judge's findings under Section 718.205(c). Employer responds, urging the Board to affirm the denial of survivor's benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.<sup>1</sup>

Before determining whether the administrative law judge's Decision and Order-Denying Benefits on claimant's survivor's claim is supported by substantial evidence, the review of the procedural history that follows is relevant to determine the status of the miner's claim. The miner filed a claim on May 5, 1994, Director's Exhibit 19, and subsequently died on May 23, 1994. Director's Exhibit 3. Claimant filed a survivor's claim on August 29, 1994. Director's Exhibit 1. The miner's claim was denied on November 19, 1994. Director's Exhibits 7, 19. Claimant requested a formal hearing before an administrative law judge on December 29, 1994. Director's Exhibit 10. In a Memorandum of Conference and Stipulation of Uncontested and Contested Issues dated April 28, 1995, the district director recommended affirmance of the denial of the miner's claim and denial of the survivor's claim. Director's Exhibit 14. On May 16, 1995, claimant disagreed with the recommendations, submitted Dr. Houser's medical opinion, and again requested a formal hearing

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<sup>1</sup>We affirm the administrative law judge's decision to credit the miner with eleven and three-quarter years of qualifying coal mine employment inasmuch as this finding is not adverse to claimant and is not challenged by employer on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). In his response brief employer challenges the administrative law judge's finding of pneumoconiosis under 20 C.F.R. §718.202(a)(2). Employer's Brief at 11-12. Because we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis under 20 C.F.R. §718.205, we need not address the administrative law judge's findings at 20 C.F.R. §§718.202(a), 718.203(b).

before an administrative law judge. Director's Exhibit 16. The district director determined that Dr. Houser's medical opinion was insufficient to establish death due to pneumoconiosis and informed claimant that the claim would be forwarded to the Office of Administrative Law Judges for a hearing. Director's Exhibit 17. On May 30, 1995, the district director asked claimant if she wanted to appeal both the miner's and survivor's claims. Director's Exhibit 18. The record does not reflect that claimant responded within thirty days. Therefore, the district director only forwarded the survivor's claim to the Office of Administrative Law Judges. Director's Exhibit 20.

Inasmuch as claimant twice requested a hearing before an administrative law judge, claimant's failure to answer the district director's letter does not constitute a voluntary and intentional waiver of claimant's right to a hearing in the miner's claim. 20 C.F.R. §725.461(a); see *Morgan v. Carbon Fuel Co.*, 3 BRBS 302, 307 (1976). Therefore, the record in this case will be returned to the district director for transmittal to the Office of Administrative Law Judges for a hearing and adjudication of the miner's claim. 20 C.F.R. §725.451; see generally *Arnold v. Peabody Coal Co.*, 41 F.3d 1203, 19 BLR 2-22 (7th Cir. 1994).

In an appeal filed by a claimant without the assistance of counsel, the Board will consider whether the Decision and Order below is supported by substantial evidence. See *McFall v. Jewell Ridge Coal Corp.*, 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.* 380 U.S. 359 (1985).