

U.S. Department of Labor

Benefits Review Board  
P.O. Box 37601  
Washington, DC 20013-7601



BRB No. 16-0086 BLA

|                                       |   |                         |
|---------------------------------------|---|-------------------------|
| AUDREY G. STAPLETON                   | ) |                         |
| (Surviving Divorced Spouse of GLEN D. | ) |                         |
| STAPLETON)                            | ) |                         |
|                                       | ) |                         |
| Claimant-Petitioner                   | ) |                         |
|                                       | ) |                         |
| v.                                    | ) |                         |
|                                       | ) |                         |
| WESTMORELAND COAL COMPANY             | ) |                         |
|                                       | ) |                         |
| Employer-Respondent                   | ) | DATE ISSUED: 08/30/2016 |
|                                       | ) |                         |
| DIRECTOR, OFFICE OF WORKERS'          | ) |                         |
| COMPENSATION PROGRAMS, UNITED         | ) |                         |
| STATES DEPARTMENT OF LABOR            | ) |                         |
|                                       | ) |                         |
| Party-in-Interest                     | ) | DECISION and ORDER      |

Appeal of the Decision and Order of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Audrey G. Stapleton, Dayton, Ohio, *pro se*.

Paul E. Frampton (Bowles, Rice LLP), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, the miner's surviving divorced spouse, appeals, without the assistance of counsel, the Decision and Order (12-BLA-5899) of Administrative Law Judge John P. Sellers, III denying benefits on a claim filed pursuant to the provisions of the of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). Claimant married the miner on January 26, 1963. Director's Exhibit 8. Claimant and the miner divorced on March 18, 1985. Director's Exhibit 10. The miner died on December 18, 2011. Director's Exhibit 13. Claimant filed a survivor's claim on February 21, 2012. Director's Exhibit 3.

In a Decision and Order dated October 28, 2015, the administrative law judge determined that claimant was ineligible to receive benefits as a surviving divorced spouse because she was unable to satisfy the dependency requirement set forth at 20 C.F.R. §725.217. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's decision denying benefits. 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.

In an appeal filed by a claimant without the assistance of counsel, the Board considers whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to be eligible for benefits, the surviving divorced spouse of a miner must have been "dependent on the miner at the pertinent time." 20 C.F.R. §725.212(a)(2). In regard to this requirement, 20 C.F.R. §725.217 provides that:

An individual who is the miner's surviving divorced spouse . . . shall be determined to have been dependent on the miner if, for *the month before the month in which the miner died*:

(a) The individual was receiving at least one-half of his or her support from the miner . . . ; or

(b) The individual was receiving substantial contributions from the miner pursuant to a written agreement . . . ; or

(c) A court order required the miner to furnish substantial contributions to the individual's support . . . .

20 C.F.R. §725.217 (emphasis added).

The administrative law judge accurately determined that claimant could not satisfy subsections (b) and (c) because there was no written agreement or court order requiring the miner to provide substantial contributions to claimant.<sup>1</sup> Decision and Order at 4-5; Director's Exhibit 10; Hearing Transcript at 13, 15-17. Consequently, the administrative law judge proceeded to determine whether claimant was receiving at least one-half of her support from the miner in November of 2011, the month before the month in which the miner died. 20 C.F.R. §725.217(a).

At the hearing, claimant testified that she assisted in the miner's care from August 2010 until his death in December 2011. Hearing Transcript at 13-14. Claimant, however, testified that she did not receive any payment for taking care of the miner. *Id.* at 13-14. Claimant conceded that she was not dependent on the miner prior to his death, and did not receive any money from him. *Id.* at 18. Claimant, in fact, testified that the miner never provided her with "significant support" after they divorced. *Id.* at 19.

After reviewing claimant's testimony, the administrative law judge found that the record "clearly reflects that the [m]iner provided no support to [claimant] prior to his death." Decision and Order at 4. Although the administrative law judge noted that claimant cared for the miner in the month prior to his death, he further noted that "she never charged him for her time and services nor did she receive any money from him." *Id.* at 5. The administrative law judge, therefore, accurately found that there is no evidence in the record supportive of a finding that claimant was receiving at least one-half of her support from the miner in November of 2011.<sup>2</sup> Because claimant cannot

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<sup>1</sup> The administrative law judge's determination that there was no written agreement requiring the miner to provide substantial contributions to claimant is supported by claimant's hearing testimony that she and the miner never entered into any contracts regarding the payment of money after they divorced. Decision and Order at 4; Hearing Transcript at 16-17. The administrative law judge's determination that there was no court order requiring the miner to provide substantial contributions to claimant is supported by claimant's hearing testimony that she never requested, nor received, alimony from the miner. Decision and Order at 4; Hearing Transcript at 13, 15. The divorce decree is silent as to the payment of any alimony. Director's Exhibit 10.

<sup>2</sup> After the hearing, claimant sought to submit a letter from the Social Security Administration (SSA). The letter from SSA, dated July 2, 2015, indicates the amount of

satisfy the dependency requirements set forth at 20 C.F.R. §725.217, the administrative law judge properly denied benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

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claimant's Social Security benefits, effective as of December 2014. Administrative Law Judge's Exhibit 4 (excluded). Although the administrative law judge excluded claimant's proffered post-hearing evidence, he correctly found that, even if he had admitted this evidence, it was not relevant to the issue before him, i.e., whether claimant received at least one-half of her support from the miner in November of 2011. Decision and Order at 5 n.3.