



BRB No. 18-0278 BLA  
Case No. 2016-BLA-05421

BERTHA L. COLVIN	)	
(Widow of FOSTER COLVIN)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 08/07/2019
	)	
EASTOVER MINING COMPANY	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	ORDER on
Party-in-Interest	)	RECONSIDERATION

Claimant, the deceased miner’s widow who is without counsel, has filed a timely motion for reconsideration of the Board’s decision in *Colvin v. Eastover Mining Co.*, BRB No. 18-0278 BLA (Apr. 15, 2019) (unpub.), affirming the administrative law judge’s denial of benefits. 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407(a). Neither employer nor the Director, Office of Workers’ Compensation Programs, has filed a response to claimant’s motion. We deny claimant’s motion and affirm the Board’s decision.

In its decision, the Board held that claimant is not entitled to the benefit of the rebuttable presumption that the miner’s death was due to pneumoconiosis because the miner was not totally disabled by a pulmonary or respiratory condition prior to his cardiac-

related death.<sup>1</sup> 30 U.S.C. §921(b)(4) (2012); 20 C.F.R. §§718.204(b)(2), 718.305(c)(2). The Board further affirmed the finding that claimant did not present any evidence that the miner's death was due to or hastened by pneumoconiosis. 20 C.F.R. §718.205(b). The Board fully addressed all relevant medical evidence under the appropriate legal standards and there is no basis for reconsideration of the Board's decision.

Claimant's motion references the 1991 disability award the miner received from the Kentucky Department of Workers' Claims.<sup>2</sup> See Director's Exhibit 17 at 8-12. Because this decision does not state the legal or medical criteria used in awarding benefits, it is not sufficient to establish that the miner was totally disabled under the federal Black Lung Benefits Act. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR-1-149 (1989) (en banc).

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<sup>1</sup> This decision was based on the following: (1) the miner's only pulmonary function study did not establish he was totally disabled; (2) the record does not contain any blood gas studies or evidence the miner suffered from cor pulmonale with right-sided congestive heart failure; and (3) Dr. Rosenberg's opinion that the miner was not disabled from a chronic respiratory or pulmonary condition prior to the onset of acute respiratory failure due to his cardiac arrest caused by septic shock.

<sup>2</sup> Claimant's motion also references a disability award the miner received from the Social Security Administration. See Tr. at 21. Even if claimant had attached a copy of this award to her motion for reconsideration, the Board could not consider it because it was not admitted into the record before the administrative law judge. 20 C.F.R. §802.301(b). The attachment to claimant's motion is an excerpt from the decision on the miner's 1991 claim under the Black Lung Benefits Act, which was denied. Director's Exhibit 17 at 2-7.

Accordingly, we deny claimant's motion for reconsideration. 20 C.F.R. §§801.301(c); 802.409. The Board's decision is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

RYAN GILLIGAN  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge