

BRB No. 99-0637 BLA

MARGARET LONG)
(Widow of ADOLPHUS D. LONG))
)
Claimant-Petitioner))
)
v.)
)
WESTMORELAND COAL COMPANY) DATE ISSUED:
)
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 Judgement of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Susan D. Oglebay, Castlewood, Virginia, for claimant.

Kathy L. Snyder (Jackson & Kelly, PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order Granting Employer's Motion for

¹Claimant is the surviving spouse of the deceased miner who died on January 4, 1995. Director's Exhibit 6.

Summary Judgement (99-BLA-0178) of Administrative Law Judge Daniel F. Sutton denying benefits 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). This case involves a duplicate 1998 survivor's claim.² After the instant case was forwarded to the Office of Administrative Law Judges, employer filed a Motion for Summary Judgment, requesting that claimant's 1998 survivor's claim be denied pursuant to 20 C.F.R. §725.309(d). Because claimant's duplicate survivor's claim was not filed within a year of the denial of claimant's prior 1995 survivor's claim, the administrative law judge granted employer's motion and denied benefits. On appeal, claimant argues that the administrative law judge erred in granting employer's motion for summary judgment. 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.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a);

²The miner filed a claim for benefits on November 1, 1991. Director's Exhibit 24-1. In a Decision and Order dated December 6, 1993, Administrative Law Judge Eric Feirtag awarded benefits on the miner's claim. Director's Exhibit 24-51. By Decision and Order dated April 28, 1995, the Board affirmed Judge Feirtag's award of benefits. *Long v. Westmoreland Coal Co.*, BRB No. 94-0594 BLA (Apr. 28, 1995) (Smith, J. dissenting) (unpublished). Employer subsequently requested reconsideration of the Board's April 28, 1995 Decision and Order. By Decision and Order on Reconsideration dated September 23, 1997, the Board reaffirmed its prior Decision and Order. *Long v. Westmoreland Coal Co.*, BRB No. 94-0594 BLA (Sept. 23, 1997) (*en banc*) (Smith, J. dissenting) (unpublished). There is no evidence that employer took any further action regarding the miner's 1991 claim.

O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718. Section 725.309(d) provides that a duplicate survivor's claim must be denied unless the later claim is a request for modification and the requirements of 20 C.F.R. §725.310 are met. 20 C.F.R. §725.309(d); *Watts v. Peabody Coal Co.*, 17 BLR 1-68 (1992); *Mack v. Matoaka Kitchekan Fuel*, 12 BLR 1-197 (1989). Claimant's first survivor's claim, filed on March 6, 1995, was finally denied by Administrative Law Judge John C. Holmes on December 26, 1996. Director's Exhibit 25-60. Claimant took no further action with respect to this claim, but rather filed a second claim on March 2, 1998, more than one year after the denial of her initial claim. Director's Exhibit 1. Thus, the later claim did not satisfy the timeliness requirement set forth in Section 725.310(a) and, according to the terms of Section 725.309(d), was properly denied as a duplicate survivor's claim. 20 C.F.R. §725.310(a); see *Watts, supra*; *Mack, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge