

BRB No. 01-0479 BLA

JOHNIE MAE HATFIELD (Widow of LUTHER HATFIELD))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
EASTERN COAL COMPANY)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Order of Dismissal of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Johnie Mae Hatfield, Pinsonfork, Kentucky, *pro se*.

Lois A. Kitts (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Order of Dismissal (2001-BLA-0070) of Administrative Law Judge Daniel J. Roketenetz rendered 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).

¹ This case involves claimant's second claim for survivor's benefits.

The miner died of respiratory failure on January 13, 1993. Claimant filed her first claim for survivor's benefits on July 5, 1994. Director's Exhibit 1. After a hearing, her claim was denied by an administrative law judge who found that the medical evidence did not establish that the miner had pneumoconiosis. Director's Exhibit 24 at 22. Upon consideration of claimant's appeal, the Board affirmed the denial of benefits on May 27, 1997. Director's Exhibit 24 at 1. Claimant took no further action on her claim.

Claimant filed her second claim for survivor's benefits on September 15, 1999. Director's Exhibit 1. The District Director of the Office of Workers' Compensation Programs (the District Director), denied benefits because he found that the record did not demonstrate that the miner's death was due to pneumoconiosis, and found that the claim must be denied pursuant to 20 C.F.R. §725.309(d)(2000). Director's Exhibits 11, 12, 20.

Section 725.309 provides in relevant part that "[i]f an earlier survivor's claim filed under this part has been finally denied, the new claim filed under this part shall also be denied unless the [District Director] determines that the later claim is a request for modification and the requirements of §725.310 are met." 20 C.F.R. §725.309(d)(2000). In turn, Section 725.310 authorizes the District Director to reconsider the terms of a denial of benefits "on grounds of a change in conditions or because of a mistake in a determination of fact," but only within "one year after the denial of a claim." 20 C.F.R. §725.310 (2000). The District Director determined that claimant's second claim was not a request for modification because it was filed more than one year after the denial of her first claim. Director's Exhibits 11, 12, 20.

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, 145 F.Supp.2d 1 (D.D.C. 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F. Supp.2d 47 (D.D.C. 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

Accordingly, the District Director found that claimant's second survivor's claim was subject to denial under 20 C.F.R. §725.309(d)(2000).

Claimant requested a hearing, the case was forwarded to the Office of Administrative Law Judges, and a hearing was scheduled for March 7, 2001. Director's Exhibits 21, 26. Prior to the scheduled hearing, employer filed a motion for summary judgment with the administrative law judge, alleging that there was no genuine issue of material fact regarding the procedural history of claimant's two claims or the applicability of 20 C.F.R. §725.309(d)(2000). Motion for Summary Judgment, Dec. 5, 2000. Claimant, by counsel, responded that her second claim should be treated as a request for modification because illness had prevented her from requesting modification within one year of the May 27, 1997 denial of her first claim. Response to Motion for Summary Judgment, Dec. 24, 2000. The record contains no response to employer's motion from the Director, Office of Workers' Compensation Programs (the Director).

In the ensuing Order of Dismissal, the administrative law judge discussed the procedural history of claimant's two claims. The administrative law judge found that because claimant's second claim was filed more than one year after the denial of her first claim, claimant's second claim must also be denied pursuant to 20 C.F.R. §725.309(d)(2000). Consequently, the administrative law judge found that no genuine issue of material fact existed and that employer was entitled to judgment as a matter of law. Accordingly, the administrative law judge granted employer's motion for summary judgment, denied the claim pursuant to 20 C.F.R. §725.309(d)(2000), and canceled the hearing.

On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance, and the Director has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with 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 (1965).

Under 20 C.F.R. §725.452(c), "[a] full evidentiary hearing need not be conducted if a party moves for summary judgment and the administrative law judge determines that there is no genuine issue as to any material fact and that the moving party is entitled to the relief requested as a matter of law." 20 C.F.R. §725.452(c); see also 29 C.F.R. §18.40(a)(Motion for Summary Decision); *Pukas v. Schuyllkill*

Contracting Co., 22 BLR 1-69, 1-72 (2000). In reviewing an administrative law judge's order granting summary judgment, the Board views the record in the light most favorable to the nonmoving party. *Dunn v. Lockheed Martin Corp.*, 33 BRBS 204, 207 (1999).

We have reviewed the record and we hold that the administrative law judge properly granted summary judgment. Review of the record indicates that claimant's second claim for survivor's benefits was filed more than one year after the final denial of her first claim. Director's Exhibits 1, 24. The record further indicates that employer raised Section 725.309(d) below as the basis for its motion for summary judgment. See *Jordan v. Director, OWCP*, 892 F.2d 482, 489, 13 BLR 2-184, 2-194 (6th Cir. 1989). Therefore, claimant's second claim constitutes a duplicate survivor's claim subject to denial under Section 725.309(d). See 20 C.F.R. §725.309(d)(2000); *Watts v. Peabody Coal Co.*, 17 BLR 1-68, 1-70 (1992); *Clark v. Director, OWCP*, 9 BLR 1-205, 1-209-210 (1986), *rev'd on other grounds*, *Clark v. Director, OWCP*, 838 F.2d 197, 11 BLR 2-46 (6th Cir. 1988).

In sum, the administrative law judge correctly concluded that since claimant's second claim for benefits was filed more than one year after the final denial of her first claim, her second claim was subject to denial as a duplicate claim under Section 725.309(d). See *Watts, supra*. Consequently, the administrative law judge properly found that no genuine issue of material fact existed and that employer was entitled to judgment as a matter of law. See 20 C.F.R. §725.452(c); 20 C.F.R. §18.40(d); *Pukas, supra*. Therefore, we affirm the grant of summary judgment to employer.

Accordingly, the administrative law judge's Order of Dismissal is affirmed.
SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge