

BRB No. 01-0588 BLA

PATTY R. MEADE)
(Widow of RAYMOND MEADE))
)
 Claimant-Petitioner)
)
 v.)
)
 NATIONAL MINES CORPORATION) DATE ISSUED:
)
 and)
)
 OLD REPUBLIC INSURANCE COMPANY)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

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

Patty R. Meade, McDowell, Kentucky, *pro se*.

Tab R. Turano (Greenberg Traurig LLP), Washington D.C., for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals, without the assistance of counsel, the Decision and Order (00-BLA-714) of Administrative Law Judge Daniel J. Roketenetz denying benefits on a

¹ Claimant is the miner's widow. Director's Exhibits 1, 4, 23, 24. The miner, Raymond Meade, died on September 6, 1982. *Id*

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 found that claimant's first survivor's claim was finally denied on February 23, 1989, that claimant's second survivor's claim was finally denied on May 10, 1991, and that claimant filed the current survivor's claim on July 21, 1999, which the district director denied on November 9, 1999 and again on January 28, 2000. The administrative law judge determined that since the current survivor's claim was filed more than one year after the denial of claimant's prior survivor's claim, the present survivor's claim was a duplicate survivor's claim governed by the provision at 20 C.F.R. §725.309(d)(2000). Based on that regulatory provision, the administrative law judge found that because claimant's current survivor's claim did not constitute a request for modification pursuant to 20 C.F.R. §725.310 (2000), it must be denied as a duplicate survivor's claim pursuant to 20 C.F.R. §725.309(d). Accordingly, benefits were denied.

On appeal, claimant generally challenges the denial of her current survivor's claim. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not respond in this appeal.²

² 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, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United 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 claims, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Association v. Chao*, No 1:00CV03086 (D.D.C. Feb. 9, 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.

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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 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 rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a).

Claimant asserts that the administrative law judge erred when he denied her current, duplicate survivor's claim. We disagree. The administrative law judge properly found that claimant's initial survivor's claim was finally denied on February 23, 1989 and that the second survivor's claim filed by her on November 16, 1990 was finally denied by the district director on May 10, 1991.³ The administrative law judge also properly determined that the current claim, which was filed on July 21, 1999, was a duplicate survivor's claim. 20 C.F.R. §725.309(c)(2000); Decision and Order at 4-5. Section 725.309(d)(2000) states that a duplicate survivor's claim is subject to automatic denial on the basis of the denial of the prior claim unless there is a determination that the later claim is a request for modification which meets the requirements of 20 C.F.R. §725.310 (2000). For claimant's current survivor's claim to be a request for modification, Section 725.310 (2000) requires that it be filed within one year of the denial of the prior survivor's claim.

³ The miner filed an application for benefits on April 28, 1982. Director's Exhibit 23. He died on September 6, 1982 and on January 24, 1983 claimant filed a survivor's claim for benefits. Director's Exhibit 23. After a hearing on the merits, Administrative Law Judge W. Ralph Musgrove denied benefits on both the miner's and the survivor's claims for benefits in a Decision and Order issued on November 13, 1986. *Id.* On appeal, the Board affirmed Judge Musgrove's finding that the evidence of record was insufficient to establish the existence of pneumoconiosis and therefore affirmed his denial of benefits on both the miner's and the survivor's claims. *Meade v. National Mines Corp.*, BRB No. 86-3071 BLA (Feb. 23, 1989)(unpub.). *Id.* Claimant took no further action until she filed a second survivor's claim on November 19, 1990. *See* Director's Exhibit 24.

In the instant case, claimant filed the current survivor's claim more than seven years after the denial of her previous survivor's claim. Thus, the administrative law judge properly concluded that this claim failed to meet the requirements for modification since it was filed more than one year after the denial of the previous survivor's claim. *See Watts v. Peabody Coal Co.*, 17 BLR 1-68 (1992); *Mack v. Matoaka Kitchehan Fuel*, 12 BLR 1-197 (1989). We, therefore, affirm the administrative law judge's finding that claimant's current survivor's claim was subject to denial as a duplicate survivor's claim pursuant to Section 725.309(d)(2000), as claimant filed the claim more than one year after the final denial of her previous survivor's claim; thereby not meeting the requirements for modification. *Id.*; *see* 20 C.F.R. §§725.309(c)(2000), 725.310 (2000).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge