

BRB No. 05-0917 BLA

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| WILLODEAN AARON |) | |
| (Widow of WARREN AARON) |) | |
| |) | |
| Claimant-Petitioner |) | |
| v. |) | |
| |) | |
| ALABAMA BY-PRODUCTS |) | DATE ISSUED: 02/28/2006 |
| CORPORATION |) | |
| |) | |
| 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 Denying Request for Modification of John M. Vitton, Chief Administrative Law Judge, United States Department of Labor.

Willodean Aaron, Jasper, Alabama, *pro se*.

C. Andrew Kitchen (Maynard, Cooper & Gale, P.C.), Birmingham, Alabama, for employer.

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

PER CURIAM:

Claimant¹, without the assistance of counsel, appeals the Decision and Order Denying Request for Modification (2004-BLA-0157) of Chief Administrative Law Judge John M.

¹ Claimant is Willodean Aaron, widow of the miner, Warren Aaron, who died on January 17, 1985. Director's Exhibit 4. Claimant filed her survivor's claim on January 22, 1985. Director's Exhibit 1.

Vittone (the administrative law judge) 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 has been before the Board numerous times. In the decision now on appeal before us, the administrative law judge found that the evidence of record failed to establish that there was a mistake in a determination of fact pursuant to 20 C.F.R. §725.310(a) in the original denial of benefits by Administrative Law Judge James W. Kerr. Accordingly, the administrative law judge denied the request for modification and the claim for benefits.²

On appeal, claimant generally challenges the administrative law judge's Decision and Order denying her request for modification and denying benefits on the claim. Employer, in response, asserts that the administrative law judge's findings are supported by substantial evidence, and that the decision denying claimant's request for modification and benefits should be affirmed. The Director, Office of Workers' Compensation Programs, (the Director) has filed a letter indicating that he will not participate in this appeal.

In an appeal by a claimant filed without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *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); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The instant case has been reviewed by three different administrative law judges on four different occasions. Further, the Board has affirmed denials by the administrative law judges on three different occasions. Director's Exhibits 61, 85, 97. Claimant has continually filed requests for modification without any additional support for a decision that the original denial contained a mistake in a determination of fact pursuant to Section 725.310(a). With respect to survivors' claims, the sole basis for modification is establishing a mistake in a determination of fact. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). In this

² The lengthy history of this case is set forth in the administrative law judge's Decision and Order Denying Request for Modification now on appeal before us and the Board's decision in *Aaron v. Alabama By-Products Corp.*, BRB No. 02-0239 BLA (Sep. 19, 2002) (unpub.) and *Aaron v. Alabama By-Products Corp.*, BRB No. 96-0124 BLA (May 30, 1996) (unpub.).

case, the administrative law judge correctly summarized all of the relevant medical evidence pursuant to Section 718.205(c). He correctly found that the record contained six medical reports by four different doctors, and that the reports by Drs. Zorn, Kelly, Rutledge, and Bailey were vague and equivocal in establishing a causal connection between the miner's pneumoconiosis and his death. Decision and Order at 7; Director's Exhibits 5, 7, 31, 37, 103. The administrative law judge, therefore, rationally determined that all of the prior medical evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). Moreover, as stated in the Board's prior decision, claimant has presented no new issue that would cause the Board to reflect further on its prior holding. The administrative law judge properly determined that there was no mistake in a determination of fact made in the prior adjudication of this claim. *See* 20 C.F.R. §725.310(a). Further, the administrative law judge's decision comports with the requirements of the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §921(b)(3), and 30 U.S.C. §932(a), in that his determination is based upon sufficient analysis and findings of fact to demonstrate that all of the relevant evidence of record was weighed. Because the administrative law judge's decision is rational, supported by substantial evidence, and in accordance with law, his denial of claimant's request for modification and denial of benefits is affirmed. 20 C.F.R. §725.310, *see O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Accordingly, the administrative law judge's Decision and Order Denying Request for Modification is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge