

BRB No. 02-0474 BLA

MARY C. BANKS )  
(Widow of LESTER BANKS) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Respondent ) DECISION and ORDER

Appeal of the Decision and Order on Remand - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Bobby D. Williams, Hindman, Kentucky, for claimant.

Jeffrey S. Goldberg (Eugene Scalia, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order - Denial of Benefits (01-BLA-0326) of Administrative Law Judge Daniel J. Roketenetz rendered on a request for modification of the denial of 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).<sup>1</sup> The administrative law judge concluded that the evidence failed to establish that pneumoconiosis caused the miner's death and, therefore, denied claimant's request for

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<sup>1</sup> 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 20 C.F.R. Parts 718, 722,725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

modification of the prior denial of benefits. Accordingly, benefits were denied.<sup>2</sup>

On appeal, claimant contends that the Act is unconstitutional insofar as it arbitrarily and capriciously creates two classes of widows: those who are automatically entitled to benefits, without having to prove that pneumoconiosis contributed to the miner's death, because of an award of benefits on a miner's claim filed, prior to January 1, 1982, and those who must establish that the miner died due to pneumoconiosis because the miner was not receiving benefits on a claim for benefits filed before January 1, 1982. *See* Sections 412(a)(2) and 422(l) of the Act; 30 U.S.C. §922(a)(2) and 932(l), and 20 C.F.R. §718.1 and 725.212(a)(3)(ii); *Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *see also* 20 C.F.R. §725.2. The Director, Office of Workers'

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<sup>2</sup> The miner filed a claim for benefits on September 13, 1983, and was receiving benefits on this claim when he died on July 18, 1994. Director's Exhibits 2, 17. Claimant filed a survivor's claim for benefits on September 23, 1994, which was denied by the Department of Labor on December 16, 1994 and on June 14, 1995, because the evidence failed to establish death due to pneumoconiosis. Director's Exhibits 1, 6, 10. After a formal hearing, Administrative Law Judge Richard K. Malamphy issued a Decision and Order denying benefits on May 7, 1997. Director's Exhibits 23, 26. The Board affirmed the denial of benefits on February 26, 1998. Pursuant to an appeal filed with the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, the court affirmed the Board's decision on February 19, 1999. Director's Exhibits 33, 38. Claimant filed a petition for modification on December 6, 1999, which was denied by the district director on May 26, 2000 and June 24, 2000. Director's Exhibits 44. After a formal hearing, Administrative Law Judge Daniel J. Roketenetz denied claimant's request for modification and again denied benefits on February 28, 2002.

Compensation Programs (the Director), responds, contending that the Board does not have the authority to find the Act unconstitutional, that there has been no violation of the equal protection clause of the Constitution, and that claimant cannot, as a matter of law, establish death due to pneumoconiosis where the miner's death was caused by suicide.

Claimant contends that the requirement that she has to prove that the miner's death was due to pneumoconiosis, while widows of miners who filed claims prior to January 1, 1982, and were awarded benefits on those claims, are not required to prove the same, is arbitrary, capricious and unconstitutional.<sup>3</sup> We disagree. Contrary to claimant's contention, and as noted by the administrative law judge, it is not within the administrative law judge's authority to decide questions regarding the constitutionality of the Act. Decision and Order at 5; *Kosh v. Director, OWCP*, 8 BLR 1-168 (1985). Nor is the Board empowered to invalidate a statute. *See generally Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)(the constitutionality of a statutory requirement is beyond an agency's jurisdiction to determine). Further, as the Director contends, the equal protection clause is not violated merely because the statute creates distinctions between classes of claimants, as long as the reasons for such distinctions are reasonable. *See Schweiter v. Wilson*, 45 U.S. 221, 210 (1981); *see Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 1004-1005, 13 BLR 2-100, 2-105-106 (3d Cir. 1989); *Bonessa v. U.S. Steel Corp.*, 884 F.2d 726, 727-728, 13 BLR 2-23, 2-25-26 (3d Cir. 1989); *see also Gabbard v. Director, OWCP*, 12 BLR 1-35 (1988); *Henson v. United States Steel Corp.*, 6 BLR 1-1245 (1984). Further, the administrative law judge properly found that the survivor of a miner who commits suicide as a result of the depressive effects of having pneumoconiosis is not entitled to benefits because the Act is not a general workers' compensation statute: it is intended to compensate only those claimants who suffer from a medical condition common among miners and their survivors as defined by the Act. *Johnson v. Peabody Coal Co.*, 26 F.3d 618, 18 BLR 2-244 (6th Cir. 1994). Thus, in the instant case, the administrative law judge acted properly in concluding that claimant was not entitled to benefits. Claimant's argument is, therefore, rejected and we hold that the administrative law judge properly concluded that claimant was not entitled to benefits. *Johnson, supra*. The administrative law judge found that the medical opinion evidence was insufficient to establish death due to pneumoconiosis, as a matter of law, and, therefore, a mistake in the determination of fact. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989).

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<sup>3</sup> Although claimant states that she would have been automatically entitled to benefits had the miner died prior to a statutory and arbitrary cut off date, her argument appears to be that she would have been automatically entitled to benefits had the miner been receiving benefits as the result of a claim filed prior to January 1, 1982.

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge