

BRB No. 03-0123 BLA
Case No. 1982-BLA-4450

EVALENE GULLEY)	
(Widow of DENZLE GULLEY)	
)	
Claimant-Respondent)	
)	
v.)	
)	
SAHARA COAL COMPANY)	DATE ISSUED: 01/30/2004
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER ON MOTION FOR RECONSIDERATION

Claimant, without the assistance of counsel, has filed a letter requesting the Board to reconsider its decision in the above-captioned case. Employer has responded asserting that the motion for reconsideration is untimely and in any event, the revisions to 20 C.F.R. ' 718.204(a) may not be applied to claims such as this that were pending on January 19, 2001.¹ The time limit for filing a motion for reconsideration of a Board=s Decision and Order may be enlarged by the Board within its discretion. *See* 20 C.F.R. ' 802.407(a); *Dailey v. Director, OWCP*, 936 F.2d 241, 15 BLR 2-129 (6th Cir. 1991). Based upon the circumstances of the instant case, the Board will proceed to adjudicate the merits of this reconsideration request.

We have fully reviewed our Decision and Order reversing the award of benefits pursuant to 20 C.F.R. Part 718 and reaffirm our holding that benefits cannot be awarded as entitlement is precluded in this case as a matter of law. The United States Court of Appeals for the Seventh Circuit has held that where a miner is disabled by a condition unrelated to coal mine employment prior to developing disabling pneumoconiosis, the miner is outside the scope of the Act.² *Freeman United Coal Mining Co. v. Foster*, 30 F.3d 834, 18 BLR 2-

¹The Board=s Decision and Order was issued on October 15, 2003 and the record indicates that claimant filed her Motion for Reconsideration on December 9, 2003.

²This case arises within the jurisdiction of the United States Court of Appeals for the

329 (7th Cir. 1994), *cert. denied*, 115 S.Ct. 1399 (1995); *Peabody Coal Co. v. Vigna*, 22 F.3d 1388, 18 BLR 2-215 (7th Cir. 1994). Moreover, the United States Court of Appeals for the District of Columbia Circuit held that revised Section 718.204(a) which stated that non-pulmonary disabilities are irrelevant to determining whether a miner is disabled due to pneumoconiosis was impermissibly retroactive as applied to pending claims and thus could not be applied to cases that had already been filed when the regulations were promulgated. *See Nat'l Mining Ass'n v. Department of Labor*, 292 F.3d 849, 864-65, BLR 2- (D.C. Cir. 2002), *aff=g in part and rev=g in part Nat'l Mining Ass'n v. Chao*, 160 F.Supp. 2d 47, BLR 2- (D.D.C. 2001). The law on this issue remains exactly as it was prior to the regulations= promulgation for cases that had already been filed when the regulations were promulgated@ and thus, contrary to claimant=s contention, the revisions to 20 C.F.R. ' 718.204 are inapplicable to claims such as this one, which were pending on January 19, 2001. *Id.* at 865. We therefore reject claimant=s arguments as they offer no new grounds for consideration of this case, and in accordance with our prior decision we hold that entitlement in this case is precluded as a matter of law.

Accordingly, claimant=s motion for reconsideration is denied.

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, JR.
Administrative Appeals Judge

Seventh Circuit as the miner was employed in the coal mine industry in the state of Illinois. *See Director=s Exhibits 2, 5; Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).