

BRB No. 05-0760 BLA

PAULINE FARMER)	
(Surviving Divorced Spouse of)	
RALPH FARMER))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
C & S COAL CORPORATION)	
)	
Employer-Respondent)	DATE ISSUED: 01/24/2006
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Claim of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Pauline Farmer, Grundy, Virginia, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying

Claim (04-BLA-6528) of Administrative Law Judge Linda S. Chapman on a subsequent survivor's claim¹ 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).² Adjudicating claimant's subsequent survivor's claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that because claimant failed to establish a change in an applicable condition of entitlement unrelated to her former husband's physical condition at the time of his death, her second claim failed to satisfy the threshold requirement pursuant to 20 C.F.R. §725.309(d)(3), and therefore, must be denied as a matter of law. Accordingly, the administrative law judge found entitlement to benefits precluded.

On appeal, claimant generally challenges the administrative law judge's Decision and Order denying benefits. Employer and the Director, Office of Workers' Compensation Programs (the Director), filed response briefs urging affirmance of the denial of benefits.

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 (1989). We must affirm the

¹ Claimant, Pauline Farmer, is the surviving divorced spouse of the miner, Ralph Farmer, who died on June 10, 1977. Director's Exhibit 8. The miner filed an application for benefits with the Social Security Administration on June 30, 1973, which was finally denied on August 12, 1979. Director's Exhibit 1. Claimant's first claim for benefits, filed on September 20, 1979, was consolidated with the claim filed by Mary Farmer, the miner's surviving spouse, and both claims were denied by Administrative Law Judge C. Richard Avery in a Decision and Order dated June 27, 1986. *Ibid.* Both claimants appealed and the Board affirmed in part and vacated in part Judge Avery's decision and, remanded the case for further consideration. *Farmer v. Director, OWCP*, BRB Nos. 86-2612 BLA and 86-2613 BLA (Oct. 29, 1990) (unpub.). On remand, Judge Avery again denied benefits on both claims in a Decision and Order issued on September 3, 1991. Thereafter, both claimants filed petitions for modification that were each denied by Administrative Law Judge Reno J. Bonfanti on April 17, 1995. Subsequently, claimant filed a second survivor's claim on February 21, 2003, which is the subject of the instant appeal. Director's Exhibit 3.

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 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations. The amended version of Section 725.309 is applicable to the instant case because this claim was filed on February 21, 2003.

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 regulations provide that a subsequent claim, filed more than one year after the effective date of a final order denying a survivor's claim, must be denied unless the claimant demonstrates that one of the applicable conditions of entitlement has changed since the date upon which the order denying the prior claim became final. 20 C.F.R. §725.309. A subsequent claim filed by a surviving spouse shall be denied unless the applicable conditions of entitlement pursuant to Section 725.212 include at least one condition unrelated to the miner's physical condition at the time of his death. 20 C.F.R. §725.309(d)(3); *Boden v. G. M. & W. Coal Co., Inc.*, 23 BLR 1-38, 1-40 (2004); *see generally Coleman v. Director, OWCP*, 345 F.3d 861, 23 BLR 2-1 (11th Cir. 2003); *Tonelli v. Director, OWCP*, 878 F.2d 1083, 12 BLR 2-319 (8th Cir. 1989); *Adkins v. Director, OWCP*, 878 F.2d 151, 12 BLR 2-313 (4th Cir. 1989); *Clark v. Director, OWCP*, 838 F.2d 197, 11 BLR 2-46 (6th Cir. 1988); *Watts v. Peabody Coal Co.*, 17 BLR 1-68, 1-70-71 (1992); *Mack v. Matoaka Kitchekan Fuel*, 12 BLR 1-197, 1-199 (1989).

In the present case, the record reveals that claimant's first claim, filed on September 20, 1979, was finally denied on remand by Administrative Law Judge C. Richard Avery in a Decision and Order issued on September 3, 1991 and on modification by Administrative Law Judge Reno J. Bonfanti in a Decision and Order issued on April 17, 1995. Director's Exhibit 1. Claimant took no further action with respect to this claim, but instead filed a second claim on February 21, 2003, more than one year after the denial of her initial claim. Director's Exhibit 3. Because the condition of entitlement that claimant failed to demonstrate in her initial claim related solely to the miner's physical condition at the time of his death, *i.e.*, whether pneumoconiosis caused or contributed to the miner's death, the administrative law judge properly found that claimant's second claim must be denied as a matter of law. 20 C.F.R. §725.309(d)(3); Decision and Order at 3. Inasmuch as the administrative law judge's findings pursuant to Section 725.309(d)(3) are in accordance with law, we affirm her finding that entitlement to benefits is precluded in this subsequent survivor's claim.

Accordingly, the Decision and Order Denying Claim of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge