

BRB No. 07-0440 BLA

M.H.)	
(Widow of M.H.))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ISLAND CREEK COAL COMPANY)	DATE ISSUED: 01/31/2008
)	
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 Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Lindsey M. Sbrolla (Thompson, Calkins & Sutter), Pittsburgh, Pennsylvania, for employer.

Michelle S. Gerdano (Gregory F. Jacob, Solicitor of Labor; Allen H. Feldman, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (2005-BLA-6095) of Administrative Law Judge Daniel L. Leland rendered 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). The administrative law judge adjudicated this claim, filed on August 19, 2003, pursuant to the regulatory provisions at 20 C.F.R. Part 718, and found that claimant, the miner's widow, had established the existence of clinical pneumoconiosis based on employer's stipulation. The administrative law judge further found, however, that pneumoconiosis did not cause, contribute to, or hasten the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, survivor's benefits were denied.

On appeal, claimant contends that the denial of benefits must be vacated because the administrative law judge did not have jurisdiction over the case. Employer and the Director, Office of Workers' Compensation Programs (the Director), respond, urging the Board to reject claimant's arguments and affirm the denial of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant maintains that because employer did not request a hearing in writing within thirty days after issuance of the district director's January 4, 2005 award of benefits, the district director's proposed decision and order became final pursuant to 20 C.F.R. §725.419 and, therefore, the administrative law judge lacked jurisdiction to hold a hearing and adjudicate the merits of this claim. Claimant's argument is without merit.

The regulations provide that the district director's proposed decision and order becomes final and effective if no party requests, in writing, either a hearing or revision of the proposed decision and order within thirty days after the date of its issuance. 20 C.F.R. §725.419(a), (d). In the present case, the record reflects that employer verbally requested a hearing on February 2, 2005 and then mailed a written request for hearing on February 8, 2005. Employer's Exhibits 13, 14, 15. The district director properly notified employer by letter dated February 25, 2005, that because employer's request for a hearing was mailed after the proposed decision and order became final, the request was untimely, and employer was directed to commence paying benefits. Director's Exhibit 34. Employer then filed a Motion for Modification on March 18, 2005, as permitted under the regulations, asserting that there had been a mistake in a determination of fact. Director's Exhibit 39; 20 C.F.R. §725.310. After the district director denied employer's request for modification, employer timely requested a hearing before an administrative law judge. *See Garcia v. Director, OWCP*, 12 BLR 1-24 (1988); 20 C.F.R. §725.310; Director's Exhibits 42, 44. On July 20, 2005, the district director notified claimant that employer had requested a hearing, and referred the case for formal hearing. Director's Exhibit 47. Thus, the Office of Administrative Law Judges properly exercised

jurisdiction over the claim, *see* 20 C.F.R. §725.421(a), and we reject claimant's arguments as unsupported by the record.

As the administrative law judge's findings on the merits of entitlement are unchallenged on appeal, we affirm his denial of survivor's benefits. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge