

U.S. Department of Labor

Benefits Review Board  
200 Constitution Ave. NW  
Washington, DC 20210-0001



BRB No. 19-0029 BLA

MABLENE L. WEBSTER	)	
(Daughter of SAM WEBSTER)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 01/08/2020
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Mablene L. Webster, North Hollywood, California.

William M. Bush (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, 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: BOGGS, Chief Administrative Appeals Judge, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2017-BLA-05520) of Administrative Law Judge Christopher Larsen (the administrative law judge) rendered pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves consideration of claimant's third survivor's claim filed on October 24, 2016.<sup>2</sup>

The administrative law judge determined that claimant is precluded, as a matter of law, from re-litigating her status as a dependent at the time of the miner's death and the cause of the miner's death. Nevertheless, he considered claimant's third survivor's claim under 20 C.F.R. §725.309(c) to determine whether she demonstrated a change in one of the applicable conditions of entitlement since Administrative Law Judge Steven B. Berlin's

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<sup>1</sup> Claimant is the daughter of the miner, who died on August 12, 1960. Director's Exhibits 1, 2. The record is devoid of evidence demonstrating that the miner filed a claim for benefits prior to his death.

<sup>2</sup> On July 28, 2005, Administrative Law Judge Paul A. Mapes denied claimant's first survivor's claim, filed on December 29, 2003, because claimant did not establish that she is a surviving adult disabled child under 20 C.F.R. §725.221 and the evidence otherwise failed to establish that the miner's death was due to pneumoconiosis. Director's Exhibit 1. The Board affirmed Judge Mapes' denial. *Webster v. Director, OWCP*, BRB No. 05-0902 BLA (Jul. 26, 2006) (unpub.); Director's Exhibit 1. Claimant took no further action on her 2003 claim and filed a subsequent claim on April 22, 2011. Director's Exhibit 2. Administrative Law Judge Steven B. Berlin, in a June 25, 2012 decision, found claimant did not establish she had a disability before the age of 22 or that the miner's death was due to pneumoconiosis. Accordingly, he concluded claimant did not establish a change in an applicable condition of entitlement under 20 C.F.R. §725.309(d) and thus denied benefits. *Id.* Administrative Law Judge Richard M. Clark denied claimant's request for modification of Judge Berlin's decision on March 18, 2014. *Id.* Claimant took no further action on her 2011 claim. She subsequently filed her third survivor's claim. Director's Exhibit 4.

2012 denial of her second survivor's claim, i.e., whether she is an eligible survivor or that the miner's death was due to pneumoconiosis. The administrative law judge found the evidence did not establish she became disabled prior to age twenty-two, a requirement for entitlement to benefits as a surviving adult-child of the miner. *See* 20 C.F.R. §725.221. Notwithstanding claimant's inability to establish the requisite eligibility as a dependent, the administrative law judge also found claimant did not establish the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).<sup>3</sup> The administrative law judge, therefore, concluded claimant did not demonstrate that an applicable condition of entitlement changed since the date upon which the denial of her prior claim became final. *See* 20 C.F.R. §725.309(c). Accordingly, the administrative law judge denied claimant's 2016 claim for survivor's benefits as a disabled adultchild of a deceased miner.

On appeal, claimant challenges the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director) responds,<sup>4</sup> urging affirmance of the denial of benefits.

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<sup>3</sup> The administrative law judge found the miner had pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202 and 718.203, but he concluded that based on the prior claim denials and his own review of the evidence, including the miner's death certificate listing carcinoma of the prostate as the sole cause of death, the miner's death was not due to pneumoconiosis. Decision and Order at 4; Director's Exhibits 1, 2.

<sup>4</sup> As this survivor's claim concerns a miner whose last employment was prior to January 1, 1970, the Black Lung Disability Trust Fund is responsible for the payment of any benefits owing and the Director is the party acting on behalf of the Fund's interests. *See* 26 U.S.C. §9501(a)(2), (d)(2); 20 C.F.R. §§701.201, 725.1(e) and (h), 725.360(a)(5).

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 Denying Benefits below is supported by substantial evidence.<sup>5</sup> See *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). We must affirm the administrative law judge's Decision and Order Denying Benefits 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The grounds for establishing entitlement to benefits in a subsequent survivor's claim are limited. The claimant must show that one of the "applicable conditions of entitlement" has changed since her prior survivor's claim was denied.<sup>6</sup> Those conditions of entitlement must include at least one issue "unrelated to the miner's physical condition at the time of his death." 20 C.F.R. §725.309(c)(4); *Boden v. G.M. & W. Coal Co.*, 23 BLR 1-39, 1-40 (2004); *Watts v. Peabody Coal Co.*, 17 BLR 1-68, 1-70-71 (1992). Claimant's prior claims were denied, in part, because she could not establish her eligibility for benefits as an adult

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<sup>5</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit, as the miner's coal mine employment occurred in Alabama. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 1, 2.

<sup>6</sup> The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3).

child of the deceased miner. Consequently, claimant had to submit new evidence establishing her eligibility to survivor's benefits. 20 C.F.R. §725.309(c)(2), (3), (4).

The regulations provide that an adult child of a deceased miner is entitled to benefits if the requisite standards of relationship and dependency are met. 20 C.F.R. §§725.218(a), 725.220, 725.221. Claimant satisfies the dependency requirement if she is under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. §423(d), that began before she attained age twenty-two.<sup>7</sup> 30 U.S.C. §902(g); 20 C.F.R. §§725.209(a)(2)(ii), 725.221. Of relevance to this case, the Social Security Act defines "disability" as an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months . . . ." 42 U.S.C. §423(d)(1)(A); *Tackett v. Director, OWCP*, 10 BLR 1-117, 1-118 (1987). A person's statements as to pain or other symptoms, standing alone, are insufficient to prove the existence of disability; thus, medical evidence must be produced. 42 U.S.C. §423(d)(5)(A).

The record establishes, as the administrative law judge found, that claimant began receiving Supplemental Security Income in 1995 when she was fifty-five years old.<sup>8</sup>

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<sup>7</sup> The record establishes claimant was born on December 5, 1940. Director's Exhibit 2. Claimant testified she was nineteen years old and living with her parents at the time of the miner's death. Hearing Transcript at 20.

<sup>8</sup> A letter to claimant from the Social Security Administration (SSA) dated June 26, 2003, states claimant was "entitled to monthly payments as a disabled individual" and a

Director's Exhibit 7. The administrative law judge therefore rationally found claimant did not establish she was disabled before the age of twenty-two, a requirement for entitlement to benefits as an adult-child of a deceased miner. 20 C.F.R. §725.221. Inasmuch as the administrative law judge's findings are supported by substantial evidence, rational, and in accordance with law, they are affirmed. Consequently, we affirm the administrative law judge's finding that claimant did not establish any change in an applicable condition of entitlement, *see* 20 C.F.R. §725.309(c), and his resulting denial of claimant's 2016 claim for benefits.<sup>9</sup> *See* 20 C.F.R. §§725.218(a); 725.221; *Hite v. Eastern Associated Coal Co.*, 21 BLR 1-46, 1-49-50 (1997); *Wallen v. Director, OWCP*, 13 BLR 1-64, 1-67-68 (1989); Decision and Order at 6.

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subsequent letter dated November 24, 2003, establishes that the payment Supplemental Security Income commenced as of December 1995. Director's Exhibit 7. As the administrative law judge correctly found, claimant submitted no new evidence regarding her eligibility, but instead relied on the SSA letters to establish her entitlement to dependent survivor's benefits. Decision and Order at 4, *citing* Hearing Transcript at 7, 8.

<sup>9</sup> In light of our affirmance of this finding, we need not address the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *See generally* *Kidda v. Director, OWCP*, 769 F.2d 165 (3d Cir. 1985).

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

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge