

BRB No. 00-1094 BLA

ALTA RITCHIE MADDEN)
(Widow of CHESTER RITCHIE))

Claimant-Petitioner)

v.)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS,)
UNITED STATES DEPARTMENT)
OF LABOR)

Respondent)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Robert L. Hillyard,
Administrative Law Judge, United States Department of Labor.

Alta Ritchie Madden, Lexington, Kentucky, *pro se*.

Barry H. Joyner (Howard M. Radzely, Acting Solicitor of Labor; Donald S.
Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor;
Richard A. Seid and 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, DOLDER and McGRANERY, Administrative Appeals
Judges.

PER CURIAM:

Claimant¹, without the assistance of counsel, appeals the Decision and Order - Denial of Benefits (99-BLA-1177) of Administrative Law Judge Robert L. Hillyard on a 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).² This case involves a duplicate survivor's claim.³ The administrative law judge credited the miner with six years

¹Claimant, Alta Ritchie Madden, is the remarried widow of the miner Chester Ritchie, who died on April 30, 1957, due to a traumatic injury to the head. Director's Exhibit 5.

²The 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 65 Fed. Reg. 80, 045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³Claimant filed her first claim for benefits on August 27, 1990, which was denied on December 31, 1990. Director's Exhibit 14. Claimant filed a second claim on November 4, 1993, which was treated as a request for modification of the denial of a previous claimant filed on behalf of the miner's daughter. This claimant was denied on February 28, 1994. Director's Exhibit 15. No further action was taken until the filing of the instant claim on July 15, 1998. Director's Exhibit 1.

and three months of coal mine employment and found that the only evidence regarding the miner's death was the death certificate, which listed the cause of death due to a rock fall in the mines, that crushed the miner's head. The administrative law judge then found that since the instant claim was filed after one year of the previous denial of benefits, pursuant to 20 C.F.R. §725.309 (2000), claimant's claim must be denied as it was a duplicate survivor's claim subject to automatic denial. The administrative law judge additionally determined that if the claim were considered on the merits, the case would be denied for failure to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) (2000). Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in his consideration of the evidence. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all Black Lung claims pending on appeal before the Board, except for those cases where the Board determines after briefing by the parties, that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on May 18, 2001, to which the Director has responded, asserting that application of the revised regulations will not alter the outcome of this case. Pursuant to the Board's instructions, claimant's failure to respond within 20 days of receipt of the Board's order will be construed as a position that the challenged regulations will not affect the outcome of this case. Based on the brief submitted by the Director, and our review, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, the Board will proceed to adjudicate the merits of this appeal.

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.⁴ *See Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *See O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

⁴Although claimant is without counsel on an appeal, she was represented by counsel at the hearing before the administrative law judge.

After careful consideration of the administrative law judge's findings and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence. Initially, the administrative law judge found that under 20 C.F.R. §725.309(d) (2000), a duplicate survivor's claim must be denied unless the later claim is a request for modification pursuant to 20 C.F.R. §725.310 (2000). The administrative law judge then properly found that since claimant took no action on the denial of her first claim until she filed the instant claim on July 14, 1998, the later claim did not satisfy the timeliness element in Section 725.310(a), and thus constituted a duplicate survivor's claim which must be denied pursuant to Section 725.309(d).⁵ Thus, the administrative law judge properly denied the claim. *See Watts v. Peabody Coal Co.*, 17 BLR 1-68 (1992); *Mack v. Matoaka Kitchekan Fuel*, 12 BLR 1-197 (1989). Inasmuch as the administrative law judge rationally denied the claim, we affirm his denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

⁵The administrative law judge refers to a claim filed by claimant in May 1992. This claim was filed on behalf of claimant's daughters. This error does not require remand, however, as the administrative law judge properly determined that the instant claim was filed more than one year after the previous denial of benefits. *See Larioni v. Director, OWCP*, 6 BLR-1276 (1984).

REGINA C. McGRANERY
Administrative Appeals Judge