

BRB No. 14-0091 BLA

DAVID ALLEN JONES)	
)	
Claimant-Petitioner)	
)	DATE ISSUED: 07/17/2014
v.)	
)	
DIRECTOR, OFFICE OF WORKERS’)	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Alan L. Bergstrom, Administrative Law Judge, United States Department of Labor.

David Allen Jones, Fayetteville, North Carolina, *pro se*.

Richard A. Seid (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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: HALL, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (2013-BLA-5588) of Administrative Law Judge Alan L. Bergstrom denying benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on February 8, 2012.¹

¹ Claimant initially filed a claim for benefits on December 30, 2003. Director’s Exhibit 1. On February 12, 2004, the district director denied benefits solely on the basis that claimant was not a miner. *Id.*

The administrative law judge found that claimant was not a coal miner within the meaning of the Act. The administrative law judge, therefore, held that claimant failed to establish that the applicable condition of entitlement had changed since the date upon which the denial of his prior claim became final. *See* 20 C.F.R. §725.309. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's 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. *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); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds 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(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Section 725.309(c)(3) provides, as an example, that "if the claim was denied solely on the basis that the individual was not a miner, the subsequent claim must be denied unless the individual worked as a miner *following the prior denial.*" 20 C.F.R. §725.309(c)(3) (emphasis added). Because claimant's prior claim was denied solely on the basis that he was not a miner, Director's Exhibit 1, his subsequent claim must be denied unless claimant worked as a miner following the prior denial.

The record contains no evidence that claimant engaged in any employment, coal mine or otherwise, following the prior denial.² We, therefore, affirm the administrative law judge's determination that claimant failed to establish that the applicable condition of entitlement had changed since the date upon which the denial of his prior claim became final. *See* 20 C.F.R. §725.309.

² On his 2012 application for federal black lung benefits, claimant indicates that he stopped working in or around coal mines in 1968. Director's Exhibit 3. Claimant also submitted a CM-911 form, wherein he indicates that he was most recently employed as a food service worker in 1988. Director's Exhibit 5.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge