

U.S. Department of Labor

Benefits Review Board  
P.O. Box 37601  
Washington, DC 20013-7601



BRB No. 16-0575 BLA

THOMAS J. BALDONI	)	
(Surviving Son of JOHN BALDONI)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 07/10/2017
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Administrative Law Judge Adele Higgins Odegard, United States Department of Labor.

Thomas J. Baldoni, Jessup, Pennsylvania.

Rita Roppolo (Nicholas C. Geale, Acting Solicitor of Labor; Maia Fisher, 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, Chief Administrative Appeals Judge, BOGGS and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2014-BLA-05513) of Administrative Law Judge Adele Higgins Odegard, rendered 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 survivor's claim filed on September 25, 2013.

In a Decision and Order issued on June 15, 2016, the administrative law judge summarily concluded that claimant failed to establish his eligibility as a disabled adult child of a deceased miner. Accordingly, the administrative law judge denied benefits.

On appeal, claimant submitted a letter to the Board generally challenging the administrative law judge's Decision and Order denying benefits. Claimant argues that while he is not seeking benefits in his own right, he has submitted sufficient credible documentation to establish entitlement to benefits in the prior denied claims of his father and mother, i.e., the miner and his surviving spouse, now both deceased. Claimant asks for a review of the evidence submitted by his family during the pendency of the prior claims filed by his father and mother. In response, the Director, Office of Workers' Compensation Programs (the Director), urges affirmance of the administrative law judge's denial of benefits, arguing that the administrative law judge properly found that claimant failed to establish eligibility as a surviving disabled adult child. Claimant submitted a letter in reply to the Director's response brief, reiterating his arguments.

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 Corp.*, 12 BLR 1-176 (1989). We must affirm the 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.<sup>2</sup> 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).

At the outset, we note that the miner's claim was finally denied on April 16, 1981 and the survivor's claim of his widow was finally denied on July 28, 2009. Director's Exhibit 1. As these claims cannot be reopened, and new claims cannot be filed on behalf of the miner or his deceased widow, there is no authority for the adjudicatory review of

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<sup>1</sup> Claimant is the surviving adult son of the miner, who died on October 7, 1992. Director's Exhibits 1, 3.

<sup>2</sup> Because the miner's last coal mine employment was in Pennsylvania, the Board will apply the law of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); *see* Director's Exhibit 5.

evidence relevant to their entitlement. *See* 20 C.F.R. §§725.301(d), 725.310, 725.479, 725.480, 725.481, 725.482. Thus, the survivor's claim filed on claimant's own behalf is the only claim that was before the administrative law judge for adjudication and that is before the Board on appeal.

Noting that claimant's application for benefits was filed as a survivor's claim by a disabled adult child of the miner, the administrative law judge set forth the regulatory criteria for establishing claimant's eligibility for benefits and the criteria for establishing entitlement to survivor's benefits under 20 C.F.R. Part 718. Decision and Order at 4-6. The administrative law judge also summarized claimant's hearing testimony and the medical opinions of Dr. Serene and Dr. Weiss, offered as evidence of claimant's disability. Decision and Order at 5; Director's Exhibits 9, 10.

However, through an apparent oversight, *see* discussion regarding Errata Decision and Order *infra*, the administrative law judge provided no further discussion or analysis of the evidence and applicable law, but summarily concluded that claimant was unable to establish that he is an eligible dependent. Decision and Order at 6. Thus, the administrative law judge failed to comply with the requirements of the Administrative Procedure Act (APA), which requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Consequently, we vacate the administrative law judge's denial of benefits and remand the case for further consideration. In rendering her decision on remand, the administrative law judge must set forth detailed findings of fact and the bases for her credibility determinations, as required by the APA. *See Wojtowicz*, 12 BLR at 1-165.

We note that on February 28, 2017, the administrative law judge issued an Errata Decision and Order Denying Benefits, indicating that the wrong draft of her decision was issued on June 15, 2016. Once a party appeals an administrative law judge's decision to the Board, however, jurisdiction of that case is transferred to the Board, thereby depriving the administrative law judge of the authority to issue additional orders or decisions in that case. *See Bartley v. L&M Coal Co.*, 7 BLR 1-243, 1-248 (1984); *Meeks v. Director, OWCP*, 6 BLR 1-794, 796 n.4 (1984); *see also Colbert v. Nat'l Steel & Shipbuilding Co.*, 14 BRBS 465, 468 (1981) (holding that the administrative law judge lacked jurisdiction to hold a modification hearing and issue a decision, when an appeal of his show-cause order was before the Board). The reason for this rule is self-evident: an administrative law judge and the Board may not exercise simultaneous jurisdiction over a case. Thus, following the docketing of an appeal with the Board, the administrative law judge does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Claimant appealed the administrative law judge's

June 15, 2016 Decision and Order to the Board on July 8, 2016, thus transferring jurisdiction to the Board. Because the administrative law judge lacked jurisdiction to issue her February 28, 2017 Errata Decision and Order, it is void, and is therefore vacated.

Accordingly, the administrative law judge's Decision and Order Denying Benefits in a Survivor's Claim is vacated and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge