



BRB No. 16-0608 BLA

MARY LOU WINGLER)
(Divorced Surviving Spouse of)
RALPH WINGLER))

Claimant-Petitioner)

v.)

JIM WALTER RESOURCES,)
INCORPORATED)

Employer-Respondent)

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

Party-in-Interest)

DATE ISSUED: 06/30/2017

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Theresa C. Timlin,
Administrative Law Judge, United States Department of Labor.

Mary Lou Wingler, Lorado, West Virginia.

John C. Webb V (Lloyd, Gray, Whitehead & Monroe, P.C.), Birmingham,
Alabama, for employer.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and
ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2013-BLA-05870) of Administrative Law Judge Theresa C. Timlin, rendered on a survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge

found that claimant was not eligible to receive benefits as a surviving divorced spouse because she did not satisfy the dependency requirements set forth in 20 C.F.R. §§725.212(a)(2) and 725.217. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs, has indicated that he will not file a substantive response to claimant's appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176, 1-177 (1989). 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.¹ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The facts relating to claimant's dependency are as follows. Claimant and the miner married in 1950 and began divorce proceedings in 1976. Director's Exhibit 6. In an order dated August 17, 1976, the judge in the divorce proceedings required the miner "to pay to [claimant] the sum of Four Hundred Fifty Dollars (\$450.00) per month as child support and alimony." Director's Exhibit 5. In the final divorce order dated September 29, 1976, the judge stated, "[i]nasmuch as constructive notice was had upon [the miner], the alimony, child support, and payment of the marital debts shall be left open until personal service is obtained upon [the miner]." *Id.* The record is silent as to whether personal service was made on the miner.

The miner died on December 2, 2012, and claimant filed her application for survivor's benefits on February 15, 2013. Director's Exhibit 1. In a letter submitted in support of her claim, claimant reported that after the divorce, "[m]y [two] children [and] I lived on my salary and food stamps."² Director's Exhibit 13. She also reported that

¹ Because the miner's coal mine employment appears to have been in West Virginia, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 5, 6, 13.

² Similarly, in her letter informing the Board that she wanted to appeal the denial of benefits, claimant stated that she "never collected any child support or alimony . . . other than \$100.00 for a few months for each child." Claimant's Appeal Letter at 2. Claimant further reiterated that she "had to go on welfare and food stamps" and that she later worked as a bus aide and Head Start teacher. *Id.* at 1.

subsequent to the miner's death, she began receiving an additional \$240.00 in her monthly Social Security check. *Id.*

To establish eligibility to receive benefits as a surviving divorced spouse of the miner, claimant has to prove that she was "dependent on the miner at the pertinent time." 20 C.F.R. §725.212(a)(2). The pertinent time is "the month before the month in which the miner died" and dependency is established by demonstrating one of the following requirements:

- (a) The individual was receiving at least one-half of his or her support from the miner . . . ; or
- (b) The individual was receiving substantial contributions from the miner pursuant to a written agreement . . . ; or
- (c) A court order required the miner to furnish substantial contributions to the individual's support

20 C.F.R. §725.217.

The administrative law judge permissibly determined that claimant could not establish any of these requirements. Pursuant to 20 C.F.R. §725.217(a), the administrative law judge found that claimant did not submit evidence proving that she received at least one-half of her support from the miner. Decision and Order at 4. The administrative law judge accurately observed that claimant stated that she did not receive any meaningful support from the miner after they were divorced. *Id.*; Director's Exhibit 13. The administrative law judge also permissibly found that even if claimant was dependent on the miner, she could not satisfy 20 C.F.R. §725.217(a) because the additional money she received from the Social Security Administration after the miner's death was less than one-half of her total monthly support.³ Decision and Order at 4; Director's Exhibit 7.

³ In rendering this finding, the administrative law judge relied on the understanding that claimant's Social Security check was in the amount of \$780.00 before the miner's death and increased by \$240.00 to \$1,020.00 after the miner died. Decision and Order at 4. In contrast, claimant reported that her Social Security check was in the amount of \$540.00 and increased by \$240.00 to \$780.00 following the miner's death. Director's Exhibit 7. The administrative law judge's conclusion that claimant received less than one-half of her support from the miner thus remains correct in either circumstance (\$240.00 is twenty-three percent of \$1,020.00; \$240.00 is thirty-one percent of \$780.00). Remand therefore is not required to resolve this conflict. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

In addition, the administrative law judge accurately determined that claimant could not satisfy the requirement at 20 C.F.R. §725.217(b) because the record does not contain evidence of a written agreement under which the miner provided substantial contributions to claimant. 20 C.F.R. §725.217(b); Decision and Order at 4.

Concerning 20 C.F.R. §725.217(c), the administrative law judge reasonably found that the miner was not required by a court order to make substantial contributions to claimant's support. Decision and Order at 4. The administrative law judge noted correctly that the final order issued in claimant's divorce from the miner "left open" his financial obligations until he was personally served. *Id.* at 4; Director's Exhibit 6. In addition, because the prior order requiring the miner to pay \$450.00 per month to claimant did not specify which part of the total was for alimony, claimant could not establish that the miner was required to make substantial contributions to her support. 20 C.F.R. §725.217(c); Director's Exhibit 5. Based on her permissible findings that claimant did not satisfy the dependency requirements at 20 C.F.R. §725.217(a)-(c), the administrative law judge reasonably concluded that claimant is not an eligible surviving divorced spouse under 20 C.F.R. §725.212(a)(2).⁴

⁴ If claimant wishes to continue to pursue benefits as the miner's surviving divorced spouse, she can file a request for modification on the basis of a mistake in a determination of fact within one year of our decision, and submit new evidence supporting a finding that she satisfies the dependency requirements of 20 C.F.R. §725.217(a)-(c). 20 C.F.R. §725.310(a). If claimant takes action more than one year after our decision, she can file a subsequent claim and submit new evidence on the issue of her dependency on the miner as defined by 20 C.F.R. §725.217(a)-(c). 20 C.F.R. §725.309(c)(4).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge