BRB No. 99-0449 BLA

JAMES N. SULLENBERGER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	*DATE ISSUED:*
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	*DECISION and ORDER*
Respondent	)	

Appeal of the Decision and Order of George P. Morin, Administrative Law Judge, United States Department of Labor.

I. John Rossi, West Des Moines, Iowa, for claimant.

Jill M. Otte (Henry L. Solano, 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, the United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-0425) of Administrative Law Judge George P. Morin denying claimant's request to reinstate the payment of benefits 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). Claimant is James N. Sullenberger, the son of the miner James K. Sullenberger, who died on November 13, 1970. Director's

Exhibit 1. Claimant is disabled and has been receiving Social Security child benefits since his father's death. Director's Exhibit 5.

On November 17, 1980, claimant's mother, Margaret L. Sullenberger, filed a claim for benefits as the miner's surviving divorced spouse. Director's Exhibit 1. The district director found that the miner died due to pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), 718.205(c) and therefore, awarded survivor's benefits. Director's Exhibit 7. Mrs. Sullenberger died on March 16, 1982. Director's Exhibit 8. Shortly after his mother's death, claimant applied for benefits on his own behalf as the disabled adult child of Margaret Sullenberger. Director's Exhibit 9. The district director awarded benefits to claimant as a disabled adult child on April 5, 1982. Director's Exhibit 10.

On August 18, 1990, claimant married Naomi Sullenberger, who is also disabled. Director's Exhibit 11; Hearing Transcript at 15-21. When claimant informed the Department of Labor of his marriage, the district director immediately suspended payment of benefits. Director's Exhibits 11, 12. Eventually, six years after the suspension, claimant requested in writing that benefits be reinstated and that a decision be issued regarding his entitlement to benefits. Director's Exhibit 15. The district director treated claimant's filing as a request for modification pursuant to 20 C.F.R. §725.310 and denied it as untimely filed because the request came more than one year after the suspension of benefits. Director's Exhibit 16; see 33 U.S.C. §922, as incorporated into the Act by Section 422(a), 30 U.S.C. §932(a); 20 C.F.R. §725.310. Thereafter, claimant requested a hearing, which was held on May 20, 1998. Director's Exhibit 18.

In his Decision and Order, the administrative law judge found that the district director, in unilaterally suspending claimant's benefits, did not follow the adjudication and hearing procedures that are required whenever an event occurs which may require the suspension, reduction, or termination of benefits. See 20 C.F.R. §725.532(c). The administrative law judge therefore determined to decide claimant's request for reinstatement de novo, and not treat it as an untimely request for modification. On the merits, the administrative law judge found that under the Act and regulations claimant is not eligible for benefits as a disabled adult child because he is married. Therefore, the administrative law judge denied claimant's request to reinstate the payment of benefits.

On appeal, claimant contends that the administrative law judge erred in determining that he is not entitled to benefits as a disabled adult child. The

Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. § 921(b)(3), as incorporated into the Act by 30 U.S.C. § 932(a); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

As an initial matter, the administrative law judge correctly found, and the Director concedes, that the district director did not follow the proper procedures when he suspended claimant's benefits. See 20 C.F.R. §725.532(c); Director's Brief at 4 n.2. The administrative law judge, acting within his broad discretion to resolve procedural matters, see Clark v. Karst-Robbins Coal Co., 12 BLR 1-149, 1-153 (1989)(en banc), therefore determined that claimant's delayed request for reinstatement of benefits should not have been deemed untimely by the district director and should be addressed on its merits. Despite the administrative law judge's ruling, claimant argues that the administrative law judge erred in not finding that the district director improperly suspended payment of benefits. Claimant's Brief at 6-7. Claimant does not specify what relief, if any, he seeks in this regard. Id. He received a full hearing and a formal adjudication on the merits of his request for reinstatement of benefits, and he does not allege that there is any time period after the district director's suspension for which he is entitled to benefits.[1] Under these circumstances, we hold that any procedural defect created by the district director's suspension of benefits was cured by the administrative law judge. See Clark, supra.

Claimant contends further that the administrative law judge erred in finding that he is not entitled to benefits as a disabled adult child. Claimant's Brief at 7-8. The Act provides that "benefits shall only be paid to a child for so long as he meets the criteria for the term 'child' contained in section 902(g) of this title." 30 U.S.C. §922(a)(3). Section 402(g) of the Act, 30 U.S.C. §902(g), defines the term "child" as a child or a step-child who is:

(1) unmarried; and

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[1] The last month for which a child is entitled to benefits is the month before the month in which the child marries. 20 C.F.R. §725.219(b)(2). The district director suspended claimant's benefits in August 1990, the month in which claimant married. Director's Exhibits 11, 12, 18.

> ***(2)(A) under eighteen years of age, or***
>
> ***(B)(i) under a disability as defined in section 423(d) of [the Social Security Act],***
>
> ***(ii) which began before the age specified in section 402(d)(1)(B)(ii) of [the Social Security Act], or, in the case of a student, before he ceased to be a student; or***
>
> ***(C) a student.***

30 U.S.C. §902(g). The implementing regulations set forth relationship and dependency requirements. As the son of the deceased miner, claimant meets the relationship requirement. See 20 C.F.R. §725.220. The applicable dependency requirement provides that a child is dependent upon a miner or surviving spouse if the child "is unmarried" and is under eighteen years of age or is eighteen years of age or older and is either disabled as defined under the Social Security Act, or is a student. 20 C.F.R. §725.209(a).

There is no dispute that claimant married on August 18, 1990. Director's Exhibit 18. To be a dependent child, however, claimant must be "unmarried." 30 U.S.C. §902(g); 20 C.F.R. §725.209(a); see Reigh v. Director, OWCP, 20 BLR 1-44, 1-48 (1996); Parsons v. Director, OWCP, 4 BLR 1-514, 1-515-16 (1981). Therefore, the administrative law judge correctly found that claimant no longer meets the criteria for the term "child" contained in Section 402(g) of the Act, and therefore is not entitled to benefits. See 30 U.S.C. §§902(g), 922(a)(3).

Claimant, however, asserts that because his wife is also disabled, the assumption that marriage ended his dependency is invalid. Claimant's Brief at 8. He argues that an individualized inquiry must be made as to whether he is still financially dependent on his parents despite his marriage. Id. The language of Section 402(g), however, contains no exceptions and provides for no such inquiry; the test is simply whether or not a claimant is married. 30 U.S.C. §902(g). Although Board and circuit court cases arising under the Act have not addressed the validity of this approach, cases arising under the analogous provision of the Social Security Act from which Section 402(g) was adapted, see 42 U.S.C. §§402(d)(1); Section-By-Section Analysis, reprinted in Legislative History of the Federal Coal Mine Health and Safety Act of 1969, at 1974, hold that no case-by-case inquiry is required.

To receive child benefits under the Social Security Act, a child must be "unmarried." 42 U.S.C. §402(d)(1)(B). Entitlement to such benefits ends when

the child marries. 42 U.S.C. §402(d)(1)(D); Crane v. Sullivan, 993 F.2d 1335, 1336 (8th Cir. 1993). Although there is a limited exception to this general rule where the child marries another person entitled to benefits under the Social Security Act, 42 U.S.C. §402(d)(5), the Social Security Act provision is otherwise similar to Section 402(g).[2]

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[2] We recognize that because claimant and his spouse both receive Social Security benefits, their marriage did not terminate either one's entitlement to such benefits because their marriage falls within the exception of Section 402(d)(5) of the Social Security Act. 42 U.S.C. §402(d)(5). Section 402(g) of the Act, however, contains no such exception. 30 U.S.C. §902(g).

Under the Social Security Act's general marriage rule, no case-by-case inquiry into a child's actual dependency is required. Once the child marries, his or her entitlement ends:

> *Instead of requiring individualized proof on a case-by-case basis, Congress has elected to use simple criteria, such as age and marital status, to determine probable dependency. A child who is married . . . is denied benefits because Congress has assumed that such a child is not normally dependent upon his parents. There is no question about the power of Congress to legislate on the basis of such factual assumptions.*

Califano v. Jobst, 434 U.S. 47, 52-53, 98 S.Ct. 95, 99 (1977).

In view of the similarity between the Social Security Act provision discussed in Jobst and the Act's unqualified requirement that a claimant be "unmarried" to receive benefits as a child, 30 U.S.C. §902(g), it is clear that Section 402(g) is valid. See Jobst, supra. Therefore, we reject claimant's contention that the administrative law judge was required to make a factual inquiry into whether claimant is still financially dependent on his parents despite his marriage.

Additionally, because the requirement that a claimant be "unmarried" is a rationally based and generally applicable rule, see Jobst, supra, we reject claimant's arguments that Section 402(g) creates a suspect classification and violates claimant's right to freely exercise his religion. Claimant's Brief at 8-9. Contrary to claimant's contentions, the provision at issue here satisfies the applicable constitutional tests. See City of Boerne v. P.F. Flores, 521 U.S. 507, 117 S.Ct. 2157 (1997); Bowen v. Roy, 476 U.S. 693, 708, 106 S.Ct. 2147, 2156 (1986); Jobst, 414 U.S. at 53-54, 98 S.Ct. at 99; Mathews v. De Castro, 429 U.S. 181, 97 S.Ct. 431 (1976); see also Gabbard v. Director, OWCP, 12 BLR 1-35, 1-37 (1988).

In sum, the administrative law judge correctly found that claimant is not entitled to benefits as a disabled adult child under the Act. Therefore, we affirm the denial of claimant's request to reinstate the payment of benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

Desk Book Section	Head Notes
II.B.2 Definitions-- Dependent or Surviving Child	The Board held that because claimant, the miner's son, was married, the administrative law judge correctly found that claimant did not meet the definition for the term "child" contained in Section 402(g) of the Act, and therefore was not entitled to benefits. Additionally, because Section 402(g) requires without exception that a claimant be unmarried to receive benefits as a child, the Board held that the administrative law judge was not required to make a factual inquiry into whether claimant was still financially dependent on his parents despite his marriage. *Sullenberger v. Director, OWCP*, 22 BLR , BRB No. 99-0449 BLA (Mar. 8, 2000).
I.D Constitutionality of the Act and Regulations	The Board upheld Section 402(g), 30 U.S.C. §902(g), which defines the term "child" as a child or step-child "who is unmarried." The Board held that, contrary to claimant's contention, Section 402(g) does not create a suspect classification or violate claimant's right to freely exercise his religion. *Sullenberger v. Director, OWCP*, 22 BLR , BRB No. 99-0449 BLA (Mar. 8, 2000).