

BRB No. 03-0610 BLA

MARGARET E. BRENNAN	)	
(Adult Child of JOHN H. BRENNAN)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 03/17/2004
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

Margaret E. Brennan, Archbald, Pennsylvania, *pro se*.

Rita Roppolo (Howard Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant,<sup>1</sup>

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<sup>1</sup> Claimant, Margaret E. Brennan, is the daughter of John H. Brennan, the miner. Decision and Order at 2; Director's Exhibit 11. Based on a claim for Black Lung Benefits filed in 1980, the miner received black lung disability benefits until his death in 1987. Decision and Order at 2-3; Director's Exhibit 1. Claimant filed for Black Lung Benefits as the surviving dependent adult child of the deceased miner in 2002, at the age of seventy-six.

without the assistance of counsel, appeals the Decision and Order (2002-BLA-05430) of Administrative Law Judge Janice K. Bullard denying 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).<sup>2</sup> The administrative law judge adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718 and determined claimant's entitlement pursuant to 20 C.F.R. §725.218. Decision and Order at 3. The administrative law judge noted the parties' stipulation that claimant was the child of the deceased miner, John H. Brennan, and thus that claimant met the relationship requirement set forth in 20 C.F.R. §725.220. Decision and Order at 4. After considering the documentary and testimonial evidence of record, the administrative law judge concluded that because claimant did not establish that she suffered from a disability which began before she was twenty-two years old, she failed to meet the dependency requirement set forth in 20 C.F.R. §725.221. Decision and Order at 4-5. The administrative law judge further found that claimant did not show that she was prevented from engaging in substantial gainful employment due to a disability. Decision and Order at 5. Accordingly, benefits were denied based upon claimant's ineligibility for benefits, and the administrative law judge did not address the issue of whether the miner's death was due to pneumoconiosis. On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response to claimant's 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. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, are supported by substantial evidence, and are in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a survivor's claim filed by a child of a miner after January 1, 1982, claimant must meet the relationship and dependency requirements of 20 C.F.R. §§725.220 and 725.221 and must establish that the miner's death was due to pneumoconiosis, and not due to a medical condition unrelated to pneumoconiosis. *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). If the deceased miner had been awarded benefits on a claim filed prior to January 1, 1982, the survivor is automatically entitled to benefits without showing death due to

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<sup>2</sup> The 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 20 C.F.R. Parts 718, 722, 725, and 726. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

pneumoconiosis. *See* Section 401(a) of the Act, 30 U.S.C. §901(a); *Deloe v. Director, OWCP*, 16 BLR 1-9 (1991); *Neeley*, 11 BLR 1-85.

The regulations provide that a child of a deceased miner is entitled to benefits if the requisite standards of relationship and dependency are met. 20 C.F.R. §725.218(a). An unmarried adult child satisfies the dependency requirement if such child is eighteen years of age or older and is under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. §423(d), provided that the disability began before the child attained age twenty-two. 20 C.F.R. §§725.209(a)(2)(ii), 725.221. The Social Security Act defines “disability” as the “inability to engage in substantial gainful activity by reason of any medically demonstrable physical or mental impairment.” 42 U.S.C. §423(d)(1)(A); *Tackett v. Director, OWCP*, 10 BLR 1-117, 1-118 (1987). Statements of a claimant, standing alone, are insufficient to prove the existence of disability, thus medical evidence must be produced. 42 U.S.C. §423(d)(5)(A); *Tackett*, 10 BLR 1-117.

After careful consideration of the administrative law judge’s Decision and Order and the evidence of record, we conclude that the administrative law judge’s Decision and Order is supported by substantial evidence and contains no reversible error because the administrative law judge rationally found that the record did not contain any reliable medical evidence establishing the onset of claimant’s disability before the age of twenty-two. *See Hite v. Eastern Assoc. Coal Co.*, 21 BLR 1-46 (1997); *Wallen v. Director, OWCP*, 13 BLR 1-64 (1989); Decision and Order at 3-5. Specifically, the administrative law judge noted that in support of her claim, claimant contended that she had suffered from scoliosis since the age of fourteen. Decision and Order at 4; Claimant’s Exhibit 1; Hearing Transcript at 17. The administrative law judge permissibly determined, however, that while claimant’s testimony and the medical reports regarding the existence and nature of her scoliosis were credible, the evidence did not establish that her scoliosis imposed limitations that would constitute a disability under the applicable regulations. Decision and Order at 4-5; *see* Director’s Exhibits 6-7; *Zbosnik v. Badger Coal Co.*, 759 F.2d 1187, 7 BLR 2-202 (4th Cir. 1985); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff’d sub nom. Amax Coal Co. v. Fagg*, 865 F.2d 916 (7th Cir. 1989); Decision and Order at 4-5; Director’s Exhibits 6-10; Claimant’s Exhibits 1-3.

Furthermore, the administrative law judge reasonably determined that claimant’s own testimony demonstrated she engaged in substantial gainful activity before the age of twenty-two as a full-time secretary upon graduation from high school, and later, upon entering the nursing profession at the age of twenty-six, she earned wages based on full and part-time work until the age of sixty-three.<sup>3</sup>

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<sup>3</sup> The miner did not claim claimant as a dependent on his application for benefits in 1980. Director’s Exhibit 1.

*See Wallen*, 13 BLR 1-64; *Tackett*, 10 BLR 1-117; Decision and Order at 5; Hearing Transcript at 18-23, 32-33. Thus, the administrative law judge rationally found that the medical evidence was insufficient to demonstrate that claimant was disabled before age twenty-two. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145 (1984); *Lupasky v. Director, OWCP*, 7 BLR 1-532, 1-534 (1984); Decision and Order at 5. Consequently, because the administrative law judge's finding that claimant was not disabled prior to the age of twenty-two pursuant to Section 725.221 is supported by substantial evidence and is in accordance with applicable law, it is affirmed.

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge