

BRB No. 98-0809 BLA

CAROLYN JANE LINDSAY COLLINS)	
(Divorced Widow of JOHN B. COLLINS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
COX COAL COMPANY,)	DATE ISSUED:
INCORPORATED)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Kenneth S. Stepp, Inveness, Florida, for claimant.

Stanley S. Dawson (Ferreri, Fogle, Pohl & Picklesimer), Lexington, Kentucky, for employer.

Helen H. Cox (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, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (97-BLA-0174) of Administrative Law Judge Edward Terhune Miller denying benefits on a survivor's 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). The administrative law judge found that although claimant qualified as a surviving divorced spouse pursuant to 20 C.F.R. §725.216, the evidence is insufficient to establish claimant's dependency on the miner pursuant to 20 C.F.R. §725.217(a)(1)-(3). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding that the court ordered divorce decree did not require the miner to furnish substantial contributions to her support at 20 C.F.R. §725.217(a)(3). Both employer² and the Director, Office of Workers' Compensation Programs, respond, urging affirmance of the administrative law judge's Decision and Order.³

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon

¹Claimant is the surviving divorced spouse of the deceased miner, John B. Collins, who died on May 23, 1993. Director's Exhibits 1, 2, 9.

²Employer contends that either claimant or her attorney should be ordered to pay the fees and costs incurred by the responsible operator in defending itself in this frivolous appeal. We are not persuaded by employer's contention that claimant's appeal is frivolous.

³Inasmuch as the administrative law judge's findings pursuant to 20 C.F.R. §§725.216 and 725.217(a)(1) and (a)(2) are not challenged on appeal, we affirm these findings. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

this Board and may not be disturbed. 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).

Claimant contends that the administrative law judge erred in finding that the court ordered divorce decree did not require the miner to furnish substantial contributions to her support at 20 C.F.R. §725.217(a)(3). Claimant’s contention is based on the premise that the survivor’s benefits that she is receiving from the Social Security Administration (SSA), which are based on the miner’s earnings record,⁴ are provided for by the court ordered divorce decree. We disagree. The administrative law judge stated that “[t]he final judgment of divorce dated July 20, 1988, does not provide for payment of support by the miner to the Claimant.” Decision and Order at 3. Nonetheless, the administrative law judge observed that “[t]he judgment does provide...[that claimant] ‘shall continue to be entitled to receive whatever governmental and Social Security benefits she would otherwise have been entitled to irrespective of the divorce herein granted.’” *Id.* Although the administrative law judge considered the fact that claimant is receiving survivor’s benefits from the SSA, the administrative law judge concluded that “[t]hese benefits were not considered contributions.” *Id.* The record contains no other court order requiring the miner to furnish substantial contributions to claimant’s support.

With regard to 20 C.F.R. §725.217(a), claimant bears the burden of proof in establishing her dependency as a surviving divorced spouse.⁵ See *Putman v. Director, OWCP*, 12 BLR 1-127 (1988); *McCoy v. Director, OWCP*, 7 BLR 1-789 (1985). The pertinent regulation provides that a miner's surviving divorced spouse shall be determined to have been dependent upon the miner if, for the month before the month in which the miner died, a court order required the miner to furnish substantial contributions to the individual's support. See 20 C.F.R. §725.217(a)(3); *Putman, supra*; *Travena v. Director, OWCP*, 7 BLR 1-799 (1985). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that Social Security payments received by divorced spouses are not contributions from a miner within the meaning of 20 C.F.R. §725.233(b). See *Director, OWCP v. Hill*, 831 F.2d 635, 10 BLR 2-308 (6th Cir. 1987). Thus, we reject

⁴The administrative law judge stated that “[i]t is unclear from the record whether these benefits were based on the miner’s contributions or her own.” Decision and Order at 3.

⁵Claimant married the miner on June 9, 1951. Director’s Exhibit 6. They were divorced on July 20, 1988. Director’s Exhibit 8. The record contains no indication that claimant has remarried.

claimant's contention that the administrative law judge erred in finding that the court ordered divorce decree did not require the miner to furnish substantial contributions to claimant's support at 20 C.F.R. §725.217(a)(3). Moreover, since claimant failed to carry her burden of establishing that a court order required the miner to furnish substantial contributions to her support, we hold that substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish claimant's dependency on the miner pursuant to 20 C.F.R. §725.217(a)(3). See *Putman, supra; McCoy, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge