

BRB No. 00-0748 BLA

RUBY BISHOP)
(Widow of OLLIE BISHOP))
)
 Claimant-Petitioner)

v.)

SHELBY FUELS CORPORATION)

DATE

ISSUED:

and)

OLD REPUBLIC INSURANCE COMPANY)

Employer/Carrier-Respondent)

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

Party-in-Interest)

DECISION and ORDER

Appeal of the Order Dismissing Claim of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Ruby Bishop, Pikeville, Kentucky, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig, L.L.P.), Washington, D.C., for employer.

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

PER CURIAM:

Claimant¹ appeals, without the assistance of counsel, the Order Dismissing Claim (00-

¹ Claimant, Ruby Bishop, is the widow of the miner, Ollie Bishop, who died on February 9, 1980. Director's Exhibit 9. Claimant filed this survivor's claim on November

BLA-99) of Administrative Law Judge Daniel J. Roketenetz denying benefits on a duplicate 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).² In this duplicate survivor's claim, Administrative Law Judge Roketenetz (the administrative law judge) found that claimant's initial survivor's claim was finally dismissed by Administrative Law Judge Bernard J. Gilday, Jr. in an Agreed Order dated January 16, 1986,³ and that claimant filed the

23, 1998. Director's Exhibit 1.

² 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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). For the convenience of the parties, all citations to the regulations herein refer to the previous regulations, as the disposition of this case is not affected by the amendments.

³ The Order Granting Agreed Motion To Dismiss stated as follows:

Counsel for the parties have filed herein their joint and Agreed

present survivor's claim on November 23, 1998. The administrative law judge determined that since the present survivor's claim was filed more than one year after the dismissal of the original survivor's claim, the present claim was a duplicate survivor's claim governed by the provisions of 20 C.F.R. §725.309(d). Based on the provisions provided therein, the administrative law judge found that claimant's present survivor's claim did not constitute a request for modification pursuant to 20 C.F.R. §725.310 and denied benefits as a matter of law pursuant to 20 C.F.R. §725.309(d) on the basis of the prior denial of a survivor's claim.

On appeal, claimant generally challenges the denial of her present claim. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not respond in this appeal.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United District Court for the District of Columbia granted limited injunctive relief and stayed for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the

Motion to Dismiss this case which has been scheduled for Hearing on February 24, 1986 in Pikeville, Kentucky. It is asserted that further pursuit of this cause is futile and prosecution of the claim is discontinued.

Since these parties are particularly well represented by thoroughly experienced, most knowledgeable and highly respected Counsel, I find that said Motion is well taken and should be granted.

Agreed Order Dated January 16, 1986.

parties to the claims, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on March 2, 2001, to which employer and the Director have responded, asserting that the regulations at issue will not affect the outcome of this case. Claimant, without the assistance of counsel, asserts generally that she is entitled to benefits. Based on the responses of the parties and our review, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, we will proceed to adjudicate the merits of this 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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *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, supported by substantial evidence, and in accordance with law. 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).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The administrative law judge properly found that claimant's initial claim was dismissed on January 16, 1986, in an order which made no provision for reopening the claim. Under Section 725.466(a), "[a] dismissal of a claim shall have the same effect as a decision and order disposing of the claim on its merits..." 20 C.F.R. §725.466(a). Section 725.309(d) provides that a duplicate survivor's claim is subject to automatic denial on the basis of the prior denial of the initial claim, unless there is a determination that the later claim is a request for modification that meets the requirements of 20 C.F.R. §725.310. 20 C.F.R. §725.309(d). Section 725.310 provides for the reconsideration of an award or denial of benefits within one year. 20 C.F.R. §725.310(a). In the instant case, inasmuch as the administrative law judge correctly found that claimant filed the present survivor's claim more than one year after the denial of her initial survivor's claim, the administrative law judge properly concluded that claimant's second claim failed to meet the requirements of Section 725.310 and was subject to denial as a duplicate survivor's claim under Section 725.309(d). 20 C.F.R. §§725.309(d), 725.310; *Watts v. Peabody Coal Co.*, 17 BLR1-68 (1992); *Mack v. Matoaka Kitchekan Fuel*, 12 BLR 1-197 (1989); see *Jordan v. Director, OWCP*, 892 F.2d 482, 13 BLR 2-184 (6th Cir. 1989); *Clark v. Director, OWCP*, 838 F.2d 197, 11 BLR 2-46 (6th Cir. 1988).

Accordingly, the administrative law judge's Order Dismissing Claim and denying

benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge