

BRB No. 01-0342 BLA

GOLDIE WILSON	)	
(Widow of WILLIAM R. WILSON)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CUMBERLAND MOUNTAIN SERVICE )	DATE ISSUED:	
CORPORATION	)	
	)	
and	)	
	)	
EMPLOYER RISK SERVICES	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Goldie Wilson, Middlesboro, Kentucky, *pro se*.

David L. Murphy (Clark, Ward & Cave), Louisville, Kentucky, for employer/ carrier.

Before: HALL, Chief Administrative Appeals Judge, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant,<sup>1</sup> without the assistance of counsel, appeals the Decision and Order - Denying Benefits (00-BLA-0570) of Administrative Law Judge Donald W. Mosser on a duplicate survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety

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<sup>1</sup>Claimant is the surviving spouse of the miner, who died on November 26, 1984. Director's Exhibit 10.

Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).<sup>2</sup> The administrative law judge denied the instant survivor's claim under 20 C.F.R. §725.309 (2000), finding that it was a duplicate survivor's claim which does not meet the requirements for modification under 20

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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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

C.F.R. §725.310 (2000). On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not presently intend to participate in this 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. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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. 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).

We affirm the administrative law judge's denial of the instant duplicate survivor's claim as it is rational, supported by substantial evidence, and in accordance with law. Survivors are barred from filing duplicate claims beyond the one year period provided for modification. Specifically, pursuant to Section 725.309(c) and (d) (2000),<sup>3</sup> if an earlier survivor's claim is finally denied, a subsequent survivor's claim must also be denied based on the prior denial unless claimant's subsequent claim is considered to be a motion for modification which satisfies the requirements of Section 725.310 (2000). *Watts v. Peabody Coal Co.*, 17 BLR 1-68, 1-70-71 (1992); *Mack v. Matoaka Kitchekan Fuel*, 12 BLR 1-197, 1-199 (1989); see *Clark v. Director, OWCP*, 9 BLR 1-205 (1986), *rev'd on other grounds, Clark v. Director, OWCP*, 838 F.2d 197, 11 BLR 2-46 (6th Cir. 1988). The administrative law judge properly determined that the instant claim must be denied as a duplicate survivor's claim as it does not meet the requirements for modification.<sup>4</sup> Decision and Order at 3-4. Claimant filed a previous survivor's claim on December 5, 1984. Director's Exhibit 13. Administrative Law Judge Rudolf L. Jansen denied that claim in a Decision and Order dated

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<sup>3</sup>The amendments to the regulation at 20 C.F.R. §725.309 (2000) do not apply to claims, such as the instant claim, which were pending on January 19, 2001. See 20 C.F.R. §725.2, 65 Fed. Reg. 80,057.

<sup>4</sup>We note that, in *Jordan v. Director, OWCP*, 892 F.2d 482, 13 BLR 2-184 (6th Cir. 1989), the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction the instant case arises, stated that it was troubled by the Board's affirmance of an administrative law judge's procedural denial of a duplicate survivor's claim where the district director had not relied upon the duplicate survivor's claims regulations at any stage of the proceedings. The instant case is distinguishable because the Director, Office of Workers' Compensation Programs, relied on the duplicate survivor's claims regulations in denying the instant duplicate survivor's claim in his Proposed Decision and Order, dated December 22, 1999. Director's Exhibit 22.

May 26, 1987.<sup>5</sup> *Id.* Claimant did not take any further action in pursuit of benefits until filing the instant duplicate claim on May 6, 1999, nearly twelve years after Judge Jansen denied survivor's benefits. Director's Exhibit 1. We, therefore, affirm the administrative law judge's denial of the instant claim for survivor's benefits under Section 725.309(d) (2000).

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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<sup>5</sup>Judge Jansen denied the 1984 survivor's claim in his Decision and Order dated May 26, 1987, finding the evidence of record insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) (2000). Jansen Decision and Order at 13-14. In the same Decision and Order, Judge Jansen awarded benefits on a miner's claim under 20 C.F.R. Part 718 (2000), a claim which had been filed on February 24, 1983 and consolidated with the 1984 survivor's claim after the miner died on November 26, 1984. Director's Exhibit 13.