

BRB No. 03-0207 BLA

SHIRLEY Z. MOONEY)
(Surviving divorced spouse of)
ROBERT A. MOONEY, deceased))
)
Claimant-Petitioner)
)
v.)
)
PYRO MINING COMPANY) DATE ISSUED: 09/26/2003
(currently known as LODESTAR))
ENERGY, INCORPORATED))
)
Employer-Respondent)
)
and)
)
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 Daniel F. Solomon,
Administrative Law Judge, United States Department of Labor.

Shirley Z. Mooney, Racine, Wisconsin, *pro se*.

Stanley S. Dawson (Fulton & Devlin), Louisville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying
Benefits (01-BLA-1140) of Administrative Law Judge Daniel F. Solomon (the administrative

law judge) on a claim for survivor's benefits¹ 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 The administrative law judge found that claimant met the "relationship" requirement under 20 C.F.R. §725.206 by establishing that she is a surviving divorced spouse of the deceased miner. The administrative law judge also found, however, that claimant did not meet the "dependency" requirement under 20 C.F.R. §725.207 as she failed to establish that she was dependent on the deceased miner for support. On the merits of the claim, the administrative law judge found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis under 20 C.F.R. §718.205. Based on his findings, the administrative law judge determined that claimant is not an eligible survivor of the deceased miner and is not entitled to benefits. Accordingly, benefits were denied. In response to claimant's appeal, employer urges the Board to affirm the decision below. Employer contends that substantial evidence supports the administrative law judge's findings that claimant is not eligible for benefits because she was not dependent on the miner and that claimant is not entitled to benefits where the evidence fails to establish death due to pneumoconiosis. The Director, Office of Workers' Compensation Programs, has not filed a brief in the 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, supported by substantial evidence, and 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).

¹ The claimant filed the instant application for survivor's benefits on April 27, 2000. Director's Exhibit 1. The miner's death certificate indicates that he died on March 2, 1992 due to acute pulmonary edema with bronchopneumonia, due to malnutrition, due to short bowel syndrome. Director's Exhibit 8. The death certificate lists renal failure, septicemia and pan lobular emphysema as other significant conditions contributing to death but not related to the causes of death identified, and further indicates that the miner underwent a bowel resection on March 18, 1991. *Id.*

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 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

After consideration of the administrative law judge's findings and the relevant evidence, we hold that substantial evidence supports the administrative law judge's finding that claimant failed to establish that she is eligible for benefits as a surviving divorced spouse of the deceased miner,³ inasmuch as claimant did not establish that she was dependent on the miner for support.⁴

The record shows that claimant and the miner were married on August 13, 1965 and divorced on July 28, 1982. Director's Exhibit 7; Employer's Exhibit 1. The July 28, 1982 Decree of Dissolution of Marriage, issued by the State of Indiana, contains no provision for any monetary support for claimant. *Id.* At the October 3, 2002 hearing before the administrative law judge, claimant testified that she had learned of the 1982 divorce in September 2002, just one week prior to the hearing, when claimant's former counsel sent her a copy of the divorce decree. Hearing Transcript at 17, 26, 31-32, 35, 49-51. Claimant testified that she left the miner and their home in Kentucky in 1983 or 1984 due to spousal abuse, and eventually moved to Wisconsin with their two sons in 1986. Hearing Transcript at 17, 18, 26.⁵ Claimant further testified that she did not receive any financial support from the miner at any time after she left him. Hearing Transcript at 35-36, 40-42, 49-51. Claimant also stated that she currently receives benefits from the Social Security Administration based on her work record, and has not remarried. Hearing Transcript at 26, 36. The record thus establishes that for February 1992, the month before the month in which the miner died,

³ Employer does not dispute that claimant is a surviving divorced spouse of the deceased miner, and refers to the fact that claimant was married to the miner "at least 10 years before the divorce decree." Employer's Brief at 3; 20 C.F.R. §725.216.

⁴ The administrative law judge erroneously considered the instant claim pursuant to the regulations applicable to claims for augmented benefits, namely 20 C.F.R. §§725.206 and 718.207. The instant claim for survivor's benefits is properly considered pursuant to the regulations at 20 C.F.R. §§725.216 and 725.217 to determine the issues of relationship and dependency. The administrative law judge's error, however, is harmless as it does not alter the disposition of this case. *Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988). As set forth herein, there is no evidence that claimant received any support from the deceased miner or that the deceased miner was under a court order requiring him to pay support to claimant.

⁵ Claimant also testified that she had moved to Indiana "for awhile," where she had last lived with the miner; the miner subsequently returned to Kentucky. Hearing Transcript at 17-18, 34. Claimant did not state, however, when she moved to Indiana or how long she lived there with the miner.

claimant was not receiving any support from the miner and the miner was not required by court order to provide support to claimant. 20 C.F.R. §725.217. Because substantial evidence supports the administrative law judge's determination that the evidence fails to establish claimant's dependency on the deceased miner, we affirm that determination.

Based on the foregoing, we affirm the administrative law judge's finding that claimant is not an eligible survivor of the deceased miner. We, therefore, further affirm the administrative law judge's denial of benefits in the instant case. In light of our decision to affirm the denial of benefits based on the administrative law judge's finding that claimant is not an eligible survivor of the deceased miner, we need not address the administrative law judge's additional finding that claimant is not entitled to benefits because the evidence is insufficient to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c).⁶

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

⁶ Consistent with the administrative law judge's finding, we note that the record is devoid of any evidence which could support claimant's burden to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c).