

BRB No. 03-0555 BLA

FRANK HAMLIN)
)
Claimant-Petitioner)
)
v.)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent)

DATE ISSUED: _____
09/23/2003

DECISION and ORDER

Appeal of the Decision and Order--Denying Benefits of Joseph E. Kane,
Administrative Law Judge, United States Department of Labor.

Frank Hamlin, Elkhorn City, Kentucky, *pro se*.

Rita Roppolo (Howard M. Radzely, Acting 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, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order--Denying Benefits (2002-BLA-5294) of Administrative Law Judge Joseph E. Kane rendered 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).¹ Claimant's first application for benefits filed on July 16, 1987 was finally denied on October 13, 1989. Director's Exhibit 1.² On August 2, 1993, claimant filed his second application for benefits, which constituted a duplicate claim because it was filed more than one year after the final denial of a previous claim. Director's Exhibit 1; *see* 20 C.F.R. §725.309(d)(2000). In a Decision and Order issued on January 27, 1995, Administrative Law Judge Gerald M. Tierney found that the evidence developed since the previous denial did not establish any element of entitlement previously adjudicated against claimant, and thus did not establish a material change in conditions as required by 20 C.F.R. §725.309(d)(2000). Director's Exhibit 1; *see Tennessee Consol. Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-288 (6th Cir. 2001); *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). Accordingly, he denied benefits.

On March 20, 1996, claimant filed his third application for benefits, which also constituted a duplicate claim under 20 C.F.R. §725.309(d)(2000). Director's Exhibit 1. In a Decision and Order issued on January 25, 2000, Administrative Law Judge Rudolf L. Jansen found that the newly submitted evidence did not establish any element of entitlement, and denied benefits. Director's Exhibit 1. Thereafter, claimant, without the assistance of counsel, sent a letter dated February 15, 2000 to the district director stating, "I would like to file a Request for Modification on my claim at this time." Director's Exhibit 1. Claimant's letter was stamped as received by the district director on February 17, 2000. The record contains no response to claimant's February 15, 2000 letter.

On February 6, 2001, claimant filed his fourth and current application for benefits. Director's Exhibit 4. Treating claimant's 2001 claim as if the 1996 claim were closed, the district director processed the 2001 claim as a new, subsequent claim for benefits pursuant to revised 20 C.F.R. §725.309(d), and subject to the limitations on medical evidence applicable to all claims filed after January 19, 2001. 20 C.F.R. §§725.2; 725.414. After a hearing, Administrative Law Judge Joseph E. Kane found that the new evidence developed in claimant's fourth claim did not establish any element of entitlement previously adjudicated against him and, accordingly, denied benefits pursuant to 20 C.F.R. §725.309(d)(3).

¹ 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.

² Director's Exhibit 1 is a large exhibit containing the documents relating to claimant's first three claims for benefits. Because Director's Exhibit 1 is unpaginated, we will refer to specific documents in Director's Exhibit 1 by their date.

On appeal, claimant generally challenges the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand to the district director for claimant's February 15, 2000 letter to be processed as a request for modification of the denial of claimant's 1996 claim.

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. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is 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 the Director's Motion to Remand, he notes correctly that claimant's "February 17, 2000 modification request involving his 1996 claim was never acted upon," and that claimant's 1996 claim is still pending. Motion at 3; *see* 20 C.F.R. §725.310(2000). Because claimant's 1996 claim was still pending when he filed his February 6, 2001 claim, the February 2001 claim merges with the 1996 claim pursuant to 20 C.F.R. §725.309(b).³ As the Director further notes, the 1996 claim is not subject to the evidentiary limitations applicable to claims filed after January 19, 2001. 20 C.F.R. §725.2(c). The Director therefore requests that this claim "be remanded to give Mr. Hamlin the opportunity to submit evidence unrestrained by Section 725.414." Motion at 3. The Director's Motion to Remand has merit, and is hereby granted.

³ Section 725.309(b) provides, in pertinent part, that "[i]f a claimant files a claim under this part while another claim filed by the claimant under this part is still pending, the later claim shall be merged with the earlier claim for all purposes." 20 C.F.R. §725.309(b).

Accordingly, the administrative law judge's Decision and Order--Denying Benefits is vacated and the case is remanded to the district director for further proceedings consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge