

[BLR cite: *Deloe v. Director, OWCP*, 16 BLR 1-9 (1991)]

BRB No. 88-3142 BLA

LUCILLE DELOE)
(Widow of PAUL ANDROSKO))
)
 Claimant-Petitioner)
)
 v.)
)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED))
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Richard E. Huddleston,
Administrative Law Judge, United States Department of Labor.

Lucille Deloe, Norton, Virginia, pro se.
Robert E. Kirschman, Jr. (Robert P. Davis, 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, the United States Department of Labor.

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

PER CURIAM:

Claimant,¹ without the aid of counsel, appeals the Decision and Order (87-
BLA-2739) of Administrative Law Judge Richard E. Huddleston denying survivor's
benefits 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.

¹ Claimant is the miner's widow. The miner died on February 25, 1964. Director's
Exhibit 5.

*Sitting as a temporary Board member by designation pursuant to the Longshore and
Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(Supp. V
1987).

§901 et seq. Evaluating the claim pursuant to 20 C.F.R. Part 718,² the administrative law judge found that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant challenges the denial of benefits. The Director, Office of Workers' Compensation Programs, responds urging affirmance of the administrative law judge's denial of benefits.

In an appeal 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 supported by substantial evidence, are rational, and are consistent 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).

² Claimant filed her claim for survivor's benefits on July 2, 1985. Director's Exhibit 1.

After consideration of the administrative law judge's Decision and Order, the evidence of record and the arguments raised on appeal, we hold that the administrative law judge's Decision and Order denying benefits is not supported by the evidence of record and does not accord with law. In denying the claim for benefits the administrative law judge found that the record contained no evidence that the miner was ever entitled to benefits, and therefore determined that claimant must establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205 in order to prove entitlement. In the instant case, the record contains evidence of a Social Security Administration determination in which the miner was found to have been totally disabled due to pneumoconiosis prior to his death. Director's Exhibit 14. The United States Court of Appeals for the Sixth Circuit has held in Director, OWCP v. Saulsberry, 887 F.2d 667, 13 BLR 2-80 (6th Cir. 1989), aff'g Saulsberry v. Director, OWCP, BRB No. 86-2650 BLA (Oct. 31, 1988)(unpublished), that 20 C.F.R. §725.218(a)(2) requires only that the miner's disability be "determined as the result of a claim filed prior to January 1, 1982," and that a determination of total disability due to pneumoconiosis by the Social Security Administration falls within that requirement. 887 F.2d at 668, 13 BLR at 2-81. As the Director concedes that Saulsberry is applicable to the instant case,³ and as the record establishes that the miner was determined to have been totally disabled due to pneumoconiosis in a claim filed prior to January 1, 1982, we must reverse the administrative law judge's Decision and Order as a matter of law.⁴ See 20 C.F.R. §725.212(a)(3)(ii); Director, OWCP v. Saulsberry, *supra*; Hill v. Director, OWCP, 9 BLR 1-126, 1-129 (1986), rev'd on other grounds, 831 F.2d 635 (6th Cir. 1987).

Accordingly, the Decision and Order of the administrative law judge denying benefits is reversed and this case is hereby remanded to the deputy commissioner for

³ We note that the Director states that it disagrees with the Board's decision in Saulsberry because criteria for establishing entitlement under Part B of the Act cannot be engrafted onto Part C claims. See Director's Brief at 7-11. This contention, however, has previously been rejected by the Board in Saulsberry, and thus need not be addressed in the present case. See Saulsberry v. Director, OWCP, BRB No. 86-2650 BLA (Oct. 31, 1988)(unpublished).

⁴ We note that claimant's marriages subsequent to the miner's death, do not bar claimant's entitlement, since her later termination of those remarriages restored her eligibility for benefits. See Wolf Creek Collieries v. Robinson, 872 F.2d 1264, 12 BLR 2-259 (6th Cir. 1989); Luchino v. Director, OWCP, 8 BLR 1-453 (1986)(en banc)(Ramsey, C.J., and Dolder, J., dissenting).

entry of an award of benefits.

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge