

BRB No. 02-0311 BLA

VIRGINIA L. FARMER)	
(Widow of BERNARD V. FARMER))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
HARMAN MINING CORPORATION)	DATE ISSUED:	
C/O TERRA INDUSTRIES)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Virginia L. Farmer, Vasant, Virginia, *pro se*.

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

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

PER CURIAM:

Claimant, the miner's widow and without the assistance of counsel,¹ appeals the

¹Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Decision and Order on Remand (1999-BLA-0084) of Administrative Law Judge Richard K. Malamphy denying benefits on a claim filed by the miner² 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).³ This case has been before the Board previously. In the most recent decision,

²Claimant is Virginia L. Farmer, surviving widow of Bernard V. Farmer, the miner, who filed three applications for benefits with the Department of Labor (DOL). The first, filed on June 7, 1984, was denied by DOL on June 19, 1985. Director's Exhibit 34. The miner filed a second claim, a duplicate claim, on March 16, 1987. Administrative Law Judge Charles P. Rippey issued a Decision and Order dated August 1, 1990, denying the claim on the basis that the evidence was insufficient to establish the existence of pneumoconiosis. Director's Exhibit 35. The miner filed a third claim on November 21, 1994. Director's Exhibit 36. The miner died on November 11, 1995. Director's Exhibit 7. Claimant then filed her application for survivor's benefits with DOL on October 7, 1997. Director's Exhibit 1. Administrative Law Judge Richard K. Malamphy denied benefits in both claims on December 17, 1999 and the Benefits Review Board affirmed the denial of benefits in the survivor's claim but vacated and remanded the case for further consideration of the miner's claim. *Farmer v. Harman Mining Corp.*, BRB No. 00-0401 BLA (May 17, 2001)(unpublished).

³The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective

the administrative law judge found a material change in conditions established in the miner's claim. Decision and Order dated December 17, 1999 at 3. Based on their respective filing dates, the administrative law judge adjudicated the claims filed by the miner and survivor pursuant to the provisions of 20 C.F.R. Part 718 and concluded that the evidence of record was insufficient to establish that the miner's total disability and death were due to pneumoconiosis. Decision and Order dated December 17, 1999 at 3-12. Accordingly, benefits were denied in both claims. On appeal, the Board affirmed the administrative law judge's determination that the miner's death was not due to pneumoconiosis pursuant to 20 C.F.R. §718.205 in the survivor's claim. The Board vacated, however, the administrative law judge's findings in the miner's claim and remanded the case for the administrative law judge to address whether the miner's claim was properly before the administrative law judge and to reconsider the relevant evidence of record, if necessary. *Farmer v. Harman Mining Corp.*, BRB No. 00-0401 BLA (May 17, 2001)(unpublished).

On remand, the administrative law judge fully addressed the viability of the miner's claim noting that neither claimant nor her representative requested a hearing in the district director's denial of the miner's claim and therefore he lacked jurisdiction over the miner's duplicate claim. Decision and Order on Remand at 3-4. Accordingly, benefits were denied in the miner's claim. On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond in the instant appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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). If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

After consideration of the administrative law judge's Decision and Order on Remand, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein.⁴ The administrative law judge, within his discretion as fact-finder, rationally determined that the evidence of record was insufficient to establish that the miner's claim was still viable. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988)(*en banc*); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983).

The administrative law judge, in addressing the miner's duplicate claim in the instant case, permissibly determined that the record fails to indicate that claimant intended to appeal the prior denial by the district director. The administrative law judge considered all of the relevant evidence pursuant to the Board's remand instructions and rationally determined that the miner's earlier claim was not properly before him since the record was insufficient to support a basis to revive the prior claim. Decision and Order on Remand at 2-4; Director's Exhibits 14, 18, 21, 25, 34-38; *Kuchwara, supra*; *Piccin, supra*. Specifically, the administrative law judge considered the two letters from claimant's lay representative, requesting a hearing in the survivor's claim and contending that pneumoconiosis contributed to the miner's death. Neither letter referred to the miner's claim or contested the finding that the miner was not totally disabled due to pneumoconiosis. The administrative law judge also considered the Department of Labor's record of an informal conference stating that claimant did not request further proceedings on the miner's claim and the list of contested issues for the hearing which related only to the survivor's claim. The administrative law judge, who has broad discretion in addressing procedural matters, acted within his discretion, in the instant case, in declining to consider the miner's claim as the record indicates that neither claimant nor her representative elected to pursue the miner's claim. Decision and Order on Remand at 2-4; Director's Exhibits 14, 18, 21, 25, 34-38; *Cochran v. Consolidation Coal Co.*, 16 BLR 1-101 (1992); *Clark, supra*; *Morgan v. Director, OWCP*, 8 BLR 1-491 (1986). Under the circumstances of this case, we discern no abuse of discretion in the administrative law judge's refusal to consider the miner's claim, and therefore, we affirm this determination.

⁴This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner was employed in the coal mine industry in the Commonwealth of Virginia. See Director's Exhibit 2; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Accordingly, the administrative law judge's Decision and Order on Remand 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