

claim must be denied because claimant is unable to satisfy the requirements of 20 C.F.R. §725.309(d). Decision and Order at 4. Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the administrative law judge's Decision and Order denying benefits.

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. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). 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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order, the arguments of the parties, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error.

Claimant filed her initial application for survivor's benefits in 1983, which the Social Security Administration denied because claimant failed to establish she was an eligible survivor. Director's Exhibit 1. Claimant filed a second application for survivor's benefits on June 7, 1992, which the Social Security Administration denied because claimant again failed to establish that she was an eligible survivor. *Id.* Claimant filed a claim with the United States Department of Labor (DOL) on August 1, 1997, which the district director denied on August 8, 1997. *Id.* The district director denied the claim based on claimant's failure to establish the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202, 718.203, or death due to pneumoconiosis at 20 C.F.R. §718.205(c). *Id.* The district director also found that claimant failed to establish that she was an eligible survivor of the miner or that she was dependent on the miner at the time of his death. *Id.* Claimant took no further action with respect to her 1997 claim until she filed this claim on November 26, 2004. Director's Exhibit 3. The district director denied the 2004 subsequent survivor's claim for claimant's failure to demonstrate "that any of the applicable conditions of entitlement have changed since the prior denial" pursuant to Section 725.309(d). Director's Exhibits 4, 6.

The regulations provide that a subsequent claim, filed more than one year after the effective date of a final order denying a survivor's claim, must be denied unless the claimant demonstrates that one of the applicable conditions of entitlement has changed since the date upon which the order denying the prior claim became final. 20 C.F.R. §725.309. A subsequent claim filed by a surviving spouse shall be denied unless the

applicable conditions of entitlement pursuant to Section 725.212 include at least one condition unrelated to the miner's physical condition at the time of his death. 20 C.F.R. §725.309(d)(3); *Boden v. G. M. & W. Coal Co., Inc.*, 23 BLR 1-38, 1-40 (2004); *see generally Coleman v. Director, OWCP*, 345 F.3d 861, 23 BLR 2-1 (11th Cir. 2003); *Tonelli v. Director, OWCP*, 878 F.2d 1083, 12 BLR 2-319 (8th Cir. 1989); *Adkins v. Director, OWCP*, 878 F.2d 151, 12 BLR 2-313 (4th Cir. 1989); *Clark v. Director, OWCP*, 838 F.2d 197, 11 BLR 2-46 (6th Cir. 1988); *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).

In considering this claim pursuant to Section 725.309(d),² the administrative law judge concluded that the present claim for survivor's benefits "must be denied on the same basis as the earlier claim as a matter of law." Decision and Order at 4; *see* 20 C.F.R. §725.309(d)(3). Eligibility and dependency were the conditions of entitlement that claimant failed to demonstrate in her initial claim which did not relate solely to the miner's physical condition at the time of his death. At the hearing, claimant testified that the miner was not under a court order to send her money and that she was not dependent on the miner at the time of his death. Hearing Transcript at 12. Furthermore, as the Director argues, there is no evidence in this record that could establish a change in a condition of entitlement as required by Section 725.309. Director's Brief at 2. Thus, because claimant is unable to satisfy the requirements of Section 725.309(d), we affirm the administrative law judge's denial of benefits. *Boden*, 23 BLR 1-38; *see Watts*, 17 BLR 1-68, 1-70 (applying previous regulation governing duplicate survivors' claims).

² The instant subsequent survivor's claim cannot be considered a request for modification because it was filed more than one year after the effective date of the final decision denying her earlier claim. 20 C.F.R. §725.310 (2000).

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge