U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 14-0438 BLA

JOY S. LUNSFORD (Daughter of ROBERT H. JARVIS) Claimant-Petitioner v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Respondent	))))))))))))	 DATE ISSUED: 08/20/2015 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits in a Survivor's Claim of Administrative Law Judge Larry S. Merck, United States Department of Labor.

Joy S. Lunsford, Flemingsburg, Kentucky, *pro se*.

Jonathan P. Rolfe (M. Patricia Smith, Solicitor of Labor; Rae Ellen Frank James, 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: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits in a Survivor's Claim (11-BLA-6223) of Administrative Law Judge Larry S. Merck rendered on a claim[1] filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)(the Act). The

[1] Claimant is the daughter of the miner who died on August 31, 1993. Claimant filed her application for survivor's benefits on November 9, 2010. Director's Exhibits 4, 8, 11-12.

administrative law judge properly identified the sole issue before him as whether claimant is an eligible disabled survivor of the miner, pursuant to 20 C.F.R. §§725.218(a) and 725.221. The administrative law judge found that claimant failed to establish that she became disabled, as defined by the Social Security Act, prior to age twenty-two.[2] *See* 20 C.F.R. §§725.218, 725.221. Accordingly, he denied claimant's claim for survivor's benefits as a disabled adult child of a deceased miner.

On appeal, claimant argues that she was disabled before the age of twenty-two, and is therefore entitled to survivor's benefits as an adult disabled child of a miner whose death was due to pneumoconiosis. Specifically, claimant asserts that while the administrative law judge considered her 2008 Social Security Administration (SSA) award for disability benefits from a lightning strike, he "never mentioned" a traumatic event she underwent at aged ten. Claimant's Brief at 1; *see also* Director's Exhibit 18 at 2-3. In response, the Director, Office of Workers' Compensation Programs, (the Director) contends that the administrative law judge considered all of the evidence of record, including the childhood traumatic event described by claimant, and accurately found that there was no evidence other than claimant's conclusory letters "to indicate that she was disabled at any earlier point." Director's Response Brief at 2. Accordingly, the Director avers that the administrative law judge properly found that claimant failed to establish eligibility as a disabled surviving adult child. Claimant filed a reply brief, reiterating her contentions.

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 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The regulations provide that a child of a deceased miner is eligible for benefits if the requisite standards of relationship and dependency are met.[3] 20 C.F.R. §725.218(a). An unmarried adult child satisfies the dependency requirement if the child is under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. §423(d), that

[2] The administrative law judge referenced the regulatory scheme devised by the Social Security Administration (SSA) for making a disability determination. *See* 42 U.S.C. §423(d); *see also* 20 C.F.R. §404.1520(a)(4)(i)-(iv); Decision and Order at 2.

[3] There is no dispute that claimant is the daughter of the deceased miner, Robert H. Jarvis, and thus satisfies the relationship requirement pursuant to 20 C.F.R §725.218(a). Decision and Order at 2.

began before the child attained age twenty-two. 30 U.S.C. §902(g); 20 C.F.R. §§725.209(a)(2)(ii), 725.221. The Social Security Act defines "disability" as "the inability to engage in substantial gainful activity by reason of any medically demonstrable physical or mental impairment."[4] 42 U.S.C. §423(d)(1)(A); *Tackett v. Director, OWCP*, 10 BLR 1-117, 1-118 (1987). In order to succeed on a survivor's claim, the child of a deceased miner must establish continuous disability from before the time he or she turned twenty-two, and provide evidence of a chain of continued dependency. *Kidda v. Director, OWCP*, 769 F.2d 165, 8 BLR 2-28 (3d Cir. 1985). Disability determinations by the SSA, while not binding, are "highly probative," as they constitute a "determination by an agency with specialized expertise, applying the definition of disability which must be applied to this controversy[.]" *See Scalzo v. Director, OWCP*, 6 BLR 1-1016, 1-1019-1020 (1984). Moreover, statements of a claimant, standing alone, are insufficient to prove the existence of disability; thus, medical evidence must be produced. 42 U.S.C. §423(d)(5)(A); *Tackett*, 10 BLR at 1-118.

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's decision is rational, supported by substantial evidence, and in accordance with law. There is no dispute that claimant, now aged sixty-eight, was found to be disabled by the SSA as of July 6, 2003, when she was fifty-six years old, from injuries sustained from a lightning strike.[5] Decision and Order at 3. After reviewing the record in claimant's SSA case, the administrative law judge adopted the findings of fact and conclusions of law rendered by SSA Administrative Law Judge Albert D. Tutera on April 24, 2008, and rationally assigned them "probative weight." Decision and Order at 3-4; Director's Exhibits 9, 17 at 1-2, 7-16; *see Scalzo*, 6 BLR at 1-1019-1020. The administrative law judge specifically discussed claimant's SSA disability claim records, which included the 2007 "psychological consultative evaluation" wherein claimant discussed the traumatic event she underwent at the age of ten.[6] *See* Decision and Order at 3; Director's Exhibit 17 at 1-2. The administrative law judge additionally reviewed claimant's letters and statements,

---

[4] Claimant's Social Security earnings documentation (under both of her married names) for the requested years 2001-2003 is a part of the record. Director's Exhibits 6, 9 at 11.

[5] The SSA found that claimant was disabled as of July 6, 2003, due to status post lightning syndrome, degenerative cervical disc disease, and an affective disorder. Director's Exhibits 8, 17 at 10, 15-16.

[6] The administrative law judge found that "[O]n August 31, 2007, Stephen P. Fritsch, Psy.D. conducted a psychological consultative evaluation of [c]laimant during which she informed him of the traumatic event. (DX17 at 1-2)." Decision and Order at 3.

particularly noting her letter of March 5, 2011 which "recounted a traumatic event that she endured when she was ten years old."[7] Decision and Order at 3-4; Director's Exhibit 15 at 10; *see also* Director's Exhibit 17 at 1-2. Thus, we reject claimant's assertion that the administrative law judge "never mentioned" the traumatic event that she discussed as occurring when she was ten years old. *See* Claimant's Brief at 1. Moreover, the administrative law judge accurately found that the record "does not include any credible medical evidence, … that any physical or mental impairment existed before the age of twenty-two, which was so severe that it would have precluded claimant from engaging in substantial gainful activity." Decision and Order at 5. Hence, based on the foregoing, the administrative law judge determined that the record failed to establish that claimant's disability began before the age of twenty-two. Decision and Order at 3, 5; *see* Director's Exhibit 17 at 9, 15-16.

We, therefore, affirm the administrative law judge's finding that claimant failed to establish that she was under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. §423(d), before she attained age twenty-two. Thus, the administrative law judge properly determined that claimant was not disabled pursuant to 20 C.F.R. §§725.209, 725.221 from engaging in a substantial gainful activity by reason of any medically demonstrable physical or mental impairment. *See* 20 C.F.R. §§725.209, 725.221; *Hite v. Eastern Associated Coal Co.*, 21 BLR 1-46 (1997); *Wallen v. Director, OWCP*, 13 BLR 1-64 (1989). Because claimant failed to satisfy her burden to establish that she was disabled prior to the age of twenty-two, we affirm the administrative law judge's denial of benefits.

[7] Claimant wrote: "[T]his is why that (sic) I am claiming my disability started before I was twenty-two years old." Director's Exhibits 10 at 4, 15 at 10.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge