



BRB No. 16-0659 BLA

MINNIE C. CHISOLM)	
(Surviving Divorced Spouse of WILLIE)	
CHISOLM))	
)	
Claimant-Petitioner)	
)	DATE ISSUED: 08/16/2017
v.)	
)	
DIRECTOR, OFFICE OF WORKERS’)	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Minnie Chisolm, Las Vegas, Nevada.

Rita Roppolo (Nicholas C. Geale, Acting Solicitor of Labor; Maia Fisher, 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:

Claimant¹ appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2011-BLA-05223) of Administrative Law Judge Scott R. Morris,

¹ Claimant is the surviving divorced spouse of the miner, who died on January 21, 1992. Director’s Exhibits 13, 14. The miner filed three lifetime claims for benefits, each of which was finally denied. (Unmarked Exhibits Preceding Director’s Exhibit 1).

rendered on a survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge found that claimant was not eligible to receive benefits as a surviving divorced spouse because she did not satisfy the dependency requirements set forth at 20 C.F.R. §725.217. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986). We must affirm the findings of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with applicable 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).

In order to be eligible for benefits, the surviving divorced spouse of a miner must have been "dependent on the miner at the pertinent time." 20 C.F.R. §725.212(a)(2). In regard to this requirement, 20 C.F.R. §725.217 provides that:

An individual who is the miner's surviving divorced spouse . . . shall be determined to have been dependent on the miner if, for the month before the month in which the miner died:

- (a) The individual was receiving at least one-half of his or her support from the miner . . .; or
- (b) The individual was receiving substantial contributions from the miner pursuant to a written agreement . . .; or
- (c) A court order required the miner to furnish substantial contributions to the individual's support

20 C.F.R. §725.217.

The record reflects that claimant and the miner married for the first time on February 16, 1941, and divorced on October 11, 1962. Hearing Transcript at 5-6. Claimant and the miner remarried on October 10, 1972, and divorced on December 13, 1974. *Id.* The miner died on January 21, 1992. Director's Exhibit 14. Thus, the pertinent time for assessing whether claimant was dependent on the miner was December 1991.

The administrative law judge considered claimant's testimony that she received no contributions or support from the miner at any time after they divorced, and that there was no written agreement or court order requiring the miner to provide support. Hearing Transcript at 29-31. Additionally, the administrative law judge considered claimant's daughter's testimony that, to the best of her knowledge, the miner was not providing any support to claimant in the month before his death. *Id.* at 15-16. Claimant's daughter also testified that in the second divorce, claimant received the family home, which she later sold to buy another home, but claimant received no income from either home.² *Id.* at 17, 21-22. The administrative law judge also considered that neither divorce decree required the miner to provide support for claimant. Director's Exhibits 9, 10.

The administrative law judge accurately found that claimant "provided no evidence that she was receiving one-half of her support from [the] [m]iner," but instead gave "consistent accounts that [he] provided no support to her." Decision and Order at 6. The administrative law judge, therefore, correctly found that claimant did not establish that she was receiving at least one-half of her support from the miner in December 1991, pursuant to 20 C.F.R. §725.217(a). Further, the administrative law judge accurately determined that claimant could not satisfy either subsection (b) or (c) of 20 C.F.R. §725.217, because there was no evidence of a written agreement or court order requiring the miner to provide substantial contributions to claimant. Decision and Order at 4-6; Director's Exhibits 1, 9, 10, 29, 33. We therefore affirm the administrative law judge's findings pursuant to 20 C.F.R. §725.217. Because claimant did not satisfy the

² In addition, the administrative law judge considered claimant's written statement that because the miner was unable to provide any support, claimant had to obtain work outside the home to support herself and her children. Director's Exhibit 29. He also considered a letter from claimant's daughter stating that in both divorce decrees, claimant and the miner waived their rights to spousal support. Director's Exhibit 33. The letter also stated that the miner was receiving "disability or Social Security," and that "Social Security payments were given to minor children at the time of both divorces." *Id.*

dependency requirements set forth at 20 C.F.R. §725.217, the administrative law judge properly denied benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge