

BRB No. 99-0612 BLA

ALICIA V. LANNING	)	
(Widow of DALE LANNING)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Order Granting Motion to Dismiss of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Alicia V. Lanning, Normalville, Pennsylvania, *pro se*.

Edward Waldman (Henry L. Solano, 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, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the aid of counsel, the Order Granting Motion to Dismiss (98-BLA-1138) of Administrative Law Judge Michael P. Lesniak denying benefits on a survivor's 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. §901 *et seq.* (the Act).<sup>1</sup> In response to a

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<sup>1</sup> Claimant is the surviving widow of the miner, Dale Lanning, who died on November 16, 1978, Director's Exhibits 5, 12. There is no miner's claim at issue in this case. Subsequent to the miner's death, claimant originally filed a survivor's claim on July 5, 1979, Director's Exhibit 12. The survivor's claim was denied by the district director after an informal conference on December 22, 1982, *id.* By letter dated March 29, 1983, claimant

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subsequently requested a hearing before the Office of Administrative Law Judges, while noting that she had no additional evidence to submit at that time, *id.* However, by letter dated April 14, 1983, the district director informed claimant that because she had not timely replied within thirty days of the denial of the claim by the district director after the informal conference, she was deemed to have accepted the denial pursuant to 20 C.F.R. §725.417(d), *id.* In addition, the district director informed claimant that because she had not submitted any new evidence, the claim was not forwarded to the Office of Administrative Law Judges for a hearing and was closed. Claimant took no further action with respect to her original claim, *see generally* 20 C.F.R. §§725.310, 725.419(d).

Claimant filed a second, duplicate survivor's claim on August 5, 1988, which was denied by the Department of Labor on January 30, 1989, in part, as a duplicate survivor's claim pursuant to 20 C.F.R. §725.309(d), Director's Exhibit 13. On February 28, 1989, claimant requested "another 30 days to get my paper work done," but no further action was

motion filed by the Director, Office of Workers' Compensation Programs (the Director), the administrative law judge found that because no action was taken within one year of the denial of claimant's prior survivor's claim on June 9, 1994, Director's Exhibit 14, the instant survivor's claim filed on September 3, 1997, Director's Exhibit 1, must be denied as a duplicate survivor's claim pursuant to 20 C.F.R. §725.309(d). Accordingly benefits were denied. Claimant's appeal, herein, followed. The Director responds, urging that the administrative law judge's Order Granting Motion to Dismiss denying benefits be affirmed.

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taken on this claim, *id.*

Claimant filed a third survivor's claim on December 20, 1993, which was denied by the Department of Labor on June 9, 1994, in part, as a duplicate survivor's claim pursuant to Section 725.309(d), Director's Exhibit 14. No further action was taken after the denial until claimant filed the instant, fourth survivor's claim on September 3, 1997, Director's Exhibit 1, at issue herein. The instant claim was denied, in part, as a duplicate survivor's claim pursuant to Section 725.309(d) on September 18, 1997, Director's Exhibit 3, and on May 27, 1998, Director's Exhibit 9. In addition, whether the instant claim should be denied as a duplicate survivor's claim pursuant to Section 725.309(d) was raised as an issue both before the district director, Director's Exhibit 8, and the administrative law judge, Director's Exhibit 15.

In an appeal filed by a claimant without the aid of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence, *see Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1985). 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Section 725.309(d) provides that a duplicate survivor's claim must be denied unless the later claim is a request for modification and the requirements of 20 C.F.R. §725.310 are met, *i.e.*, that it is filed within one year after the denial of the initial claim. 20 C.F.R. §725.309(d); *Watts v. Peabody Coal Co.*, 17 BLR 1-68 (1992), *aff'd*, 9 F.3d 111 (6th Cir. 1993)(table); *Mack v. Matoaka Kitchikan Fuel*, 12 BLR 1-197 (1989); *Clark v. Director, OWCP*, 9 BLR 1-205 (1986), *rev'd on other grounds*, *Clark v. Director, OWCP*, 838 F.2d 197, 11 BLR 2-46 (6th Cir. 1988).

Claimant did not file the instant claim in accordance with the provisions of 20 C.F.R. §725.310, *see* 20 C.F.R. §725.310. Claimant's prior claim was finally denied by the district director on June 9, 1994, Director's Exhibit 14. Based on the evidence of record, claimant took no further action, but rather filed the instant claim on September 3, 1997, more than one year after the prior denial. Director's Exhibit 1. Moreover, the Director raised Section 725.309(d) as an issue to be considered by the administrative law judge and throughout the history of this case, Director's Exhibits 3, 8-9, 13-15, *see Watts, supra*; *see also Jordan v. Director, OWCP*, 892 F.2d 482, 13 BLR 2-184 (6th Cir. 1989); *Clark, supra*. Thus, the instant claim did not satisfy the timeliness requirement set forth in Section 725.310(a) and, according to the terms of Section 725.309(d), was properly denied by the administrative law judge as a duplicate survivor's claim. 20 C.F.R. §725.310(a), *see Watts, supra*; *Mack, supra*; *Clark, supra*.

Accordingly, the Order Granting Motion to Dismiss of the administrative law judge denying benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge