

BRB No. 04-0502 BLA

KELSIE FIELDS)
(Widow of HAPPY J. FIELDS))
)
Claimant-Petitioner)
)
v.)
)
DIAMOND COAL COMPANY)
INCORPORATED)
)
and)
) DATE ISSUED: 02/28/2005
OLD REPUBLIC INSURANCE COMPANY)
)
Employer/Carrier-)
Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest)
) DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Linda S. Chapman,
Administrative Law Judge, United States Department of Labor.

Kelsie Fields, Blaine, Kentucky, *pro se*.

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

Before: SMITH, McGRANERY, and BOGGS, Administrative Appeals
Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel,² appeals the Decision and Order - Denying Benefits (03-BLA-5863) of Administrative Law Judge Linda S. Chapman on a subsequent 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). The administrative law judge found that claimant's present survivor's claim must be denied because claimant is unable to satisfy the requirements of 20 C.F.R. §725.309(d). Decision and Order at 3. Alternatively, applying the regulations pursuant to 20 C.F.R. Part 718, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Id.* at 5. Accordingly, benefits were denied.

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

¹ Claimant is Kelsie Fields, widow of the miner, Happy J. Fields. Claimant filed her initial application for survivor's benefits on August 21, 2000. Director's Exhibit 1. Claimant's first claim was finally denied by a United States Department of Labor (DOL) claims examiner on November 29, 2000 because claimant failed to establish the existence of pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. *Id.* On May 16, 2002, claimant sent an inquiry to DOL, requesting application forms. Director's Exhibit 3. Claimant filed her second claim for benefits on June 7, 2002. Director's Exhibit 4. The district director issued an Order on November 13, 2002, instructing claimant to show cause why her claim should not be denied as a subsequent survivor's claim pursuant to 20 C.F.R. §725.309(d). Director's Exhibit 19. Claimant did not respond to the district director's Order to Show Cause, but requested a hearing before the Office of Administrative Law Judges. Director's Exhibit 24. Thereafter, the district director denied claimant's second claim for 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 Exhibit 26.

² Susie Davis, a benefits counselor with the Kentucky Black Lung Coalminers & Widows Association of Pikeville, Kentucky, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Ms. Davis is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

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).

Section 725.309(d) provides in pertinent part:

If a claimant files a claim under this part more than one year after the effective date of a final order denying a claim previously filed by the claimant under this part (see §725.502(a)(2)), the later claim shall be considered a subsequent claim for benefits. A subsequent claim shall be processed and adjudicated in accordance with the provisions of subparts E and F of this part, except that the claim shall be denied unless the claimant demonstrates that one of the applicable conditions of entitlement (see §§725.202(d) (miner), 725.212 (spouse), 725.218 (child), and 725.222 (parent, brother, or sister)) has changed since the date upon which the order denying the prior claim became final.

20 C.F.R. §725.309(d). The regulation at 20 C.F.R. §725.309(d)(3) further provides: "A subsequent claim filed by a surviving spouse, child, parent, brother, or sister shall be denied unless the applicable conditions of entitlement in such claim 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).

The record reveals that claimant's first claim, filed on August 21, 2000, was finally denied by a United States Department of Labor claims examiner on November 29, 2000. Director's Exhibit 1. The record also indicates that claimant took no further action with respect to her first claim, but filed a second survivor's claim on June 7, 2002. Director's Exhibit 4. Therefore, claimant's second 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). The administrative law judge noted that claimant's initial survivor's claim was denied because claimant failed to establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. Decision and Order at 3. The administrative law judge stated that all of the findings upon which the denial of claimant's prior claim are based "relate to the miner's physical condition at the time of his death" and "are not subject to change." *Id.* Accordingly, the administrative law judge concluded that claimant's present claim must be denied pursuant to Section 725.309(d)(3). *Id.*

In considering the present claim pursuant to Section 725.309(d), the administrative law judge properly found that the applicable conditions of entitlement did not include at least one condition unrelated to the miner's physical condition at the time of his death. *Id.* Thus, because claimant is unable to satisfy the requirements of Section 725.309(d), we affirm the administrative law judge's denial of benefits.³ *Boden v. G.M. & W. Coal Co., Inc.*, 23 BLR 1-38 (2004); *see Watts v. Peabody Coal Co.*, 17 BLR 1-68, 1-70 (1992)(applies previous regulation governing duplicate survivors' claims); *Mack v. Matoaka Kitchekan Fuel*, 12 BLR 1-197, 1-199 (1989)(same).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

³ As a finding of entitlement is precluded under Section 725.309(d)(3), we need not review the administrative law judge's findings on the merits under 20 C.F.R. Part 718.