BRB No. 05-0902 BLA

MABLENE L. WEBSTER (Daughter of SAM WEBSTER)	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED: 07/26/2006
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Paul A. Mapes, Administrative Law Judge, United States Department of Labor.

Mablene L. Webster, North Hollywood, California, *pro se*.

Sarah M. Hurley (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy 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: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (04-BLA-6855) of Administrative Law Judge Paul A. Mapes rendered 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). The instant case is governed by the 2001 regulations as it is a survivor's claim filed in December 2003.[1]

[1] The Department of Labor has amended the regulations implementing the Federal

Decision and Order at 1; Director's Exhibit 2. The miner died on August 12, 1960, and neither the miner nor his widow had applied for black lung benefits. Claimant seeks benefits in her own right as the miner's adult dependent disabled child.[2] The administrative law judge found that claimant did not establish her eligibility for survivor's benefits under the Act.[3] Nonetheless, the administrative law judge considered the merits of claimant's survivor's claim. In this regard, the administrative law judge found that claimant established that the miner had pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202 and 718.203, since it was conceded by the Director, Office of Workers' Compensation Programs (the Director). However, the administrative law judge found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits on the merits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director responds that the administrative law judge properly denied benefits, as claimant failed to establish both her dependency on the miner and that the miner died due to pneumoconiosis.

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. *Boden v. G.M. & W. Coal Co., Inc.*, 23 BLR 1-38, 1-40 (2004); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 entitled to benefits if the standards of relationship and dependency are met. 20 C.F.R. §725.218(a). An unmarried adult child satisfies the dependency requirement if such child is 18 years of age or older and is under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. §423(d), provided that the disability began before the child reached age 22.[4] 20 C.F.R.

Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002).

[2] Claimant's date of birth is December 5, 1940, and thus she was 64 years of age at the hearing in April 2005. Tr. at 20.

[3] There is no statute of limitations in survivor's cases. 20 C.F.R. §725.308(a).

[4] The prior regulations required that the disability begin before the child reaches age 18, 20 C.F.R. §725.221 (2000), but the regulations that took effect on January 19, 2001, require that the disability begin before the child reaches age 22, thus conforming to the same change in 42 U.S.C. §423(d). *See* 20 C.F.R. §725.221.

§725.221. 42 U.S.C. §423(d)(1)(A) states:

> (d) "Disability" defined
> (1) The term "disability" means—
>
> > (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, ...

42 U.S.C. §423(d)(1)(A); *see also* 20 C.F.R. §404.1505(a)(same definition). 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).[5]

In the instant case, the administrative law judge rationally found that claimant's physical and mental disabilities did not preclude her from engaging in any substantial gainful activity before she reached twenty-two years of age since there is no medical evidence supporting this position. *See Tackett v. Director, OWCP*, 10 BLR 1-117 (1987); *Lupasky v. Director, OWCP*, 7 BLR 1-532 (1984). In both *Tackett* and *Lupasky*, the Board affirmed the administrative law judge's finding that claimants therein did not establish their eligibility under the Act since there was no medical evidence establishing that the claimants were disabled prior to the then-required age of 18. Here, as in *Tackett* and *Lupasky*, there is no medical evidence of any disability prior to the required age of 22. The only evidence regarding claimant's disability consists of her testimony at the hearing, her statements in a 2004 handwritten letter, and two letters to claimant from the Social Security Administration (SSA) in response to her requests for information. Claimant testified as to her life-long physical and mental disabilities, *see* Tr. at 20-23, 26-27, and stated in a written 2004 letter that she has "no work record" and "got 'general relief' until they got my [Social Security Income] (SSI) [benefits] started because of my mental and physical [disabilities]. . . ." Director's Exhibit 16. By letter dated June 26, 2003 to claimant, the SSA stated that claimant is "entitled to monthly payments as a disabled individual." Director's Exhibit 7. By letter dated November 24, 2003 to claimant, the SSA stated that claimant's benefits started December 1995, at which time claimant was age 55. *Id.* Moreover, in the instant case, the administrative law judge rationally concluded that the fact that claimant is currently receiving SSI benefits and has been since age fifty-five is insufficient to establish that she was disabled before she reached twenty-two years old, because the Social Security Act requires lesser showings of disability for persons fifty-five and older, than for younger persons. *See* 20

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[5] 42 U.S.C. §423(d)(5)(A) provides in relevant part, "An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability . . .; there must be medical signs and findings, ..." 42 U.S.C. §423(d)(5)(A).

C.F.R. §416.963.[6] Thus, the administrative law judge's finding that claimant failed to establish her disability before she turned twenty-two years of age is supported by substantial evidence, rational, and in accordance with law. *See* 20 C.F.R. §§725.218(a); 725.221.

Consequently, we affirm the administrative law judge's denial of benefits because claimant did not establish her eligibility as a survivor under the Act. In light of our affirmance of this finding, we need not address the administrative law judge's finding on the merits that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[6] 20 C.F.R. §416.963 is titled, "Your age as a vocational factor." It provides that for "younger" persons under age 50, SSA does not consider age to seriously affect a person's ability to adjust to other work. 20 C.F.R. §416.963(c). However, SSA does consider that age, along with other factors, may seriously affect one's ability to adjust to other work from ages 50 to 54. 20 C.F.R. §416.963(d). With respect to persons of "advanced" age 55 or older, SSA considers age to significantly affect a person's ability to adjust to other work. 20 C.F.R. §416.963(e).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge