

BRB No. 06-0871 BLA

D. B.)
(Widow of W. B.))
)
Claimant-Respondent)
)
v.)
)
MOUNTAIN LAUREL RESOURCES) DATE ISSUED: 07/25/2007
COMPANY)
)
and)
)
WEST VIRGINIA COAL WORKERS')
PNEUMOCONIOSIS FUND)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order – Awarding Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Mary Z. Natkin (Washington and Lee University School of Law, Legal Clinic), Lexington, Virginia, for claimant.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer and carrier.

Sarah M. Hurley (Jonathan L. Snare, Acting Solicitor of Labor; 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:

Employer appeals the Decision and Order – Awarding Benefits (2004-BLA-5996) of Administrative Law Judge Michael P. Lesniak 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 administrative law judge adjudicated this claim, filed on March 4, 2003, pursuant to the regulatory provisions at 20 C.F.R. Part 718, and found that claimant, the miner’s widow, established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, survivor’s benefits were awarded.

On appeal, employer contends that the award of benefits must be vacated because the administrative law judge did not have jurisdiction over the case. Claimant and the Director, Office of Workers’ Compensation Programs (the Director), respond, urging the Board to reject employer’s arguments and affirm the award of benefits.

The Board’s scope of review is defined by statute. The administrative law judge’s Decision and Order must be affirmed if it is 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’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer maintains that because claimant did not request a hearing within thirty days after issuance of the district director’s October 24, 2003 denial of benefits, the district director’s proposed decision and order became final pursuant to 20 C.F.R. §725.419, and thus, the administrative law judge lacked jurisdiction to adjudicate the merits of this claim. Employer’s arguments are without merit.

The regulations provide that the district director’s proposed decision and order becomes final and effective if no party requests, in writing, either a hearing or revision of the proposed decision and order within thirty days after the date of its issuance. 20 C.F.R. §725.419(a), (d). If a timely request for revision is made, however, the district director may amend the proposed decision and order “or take such other action as is appropriate.” 20 C.F.R. §725.419(c). In the present case, the record reflects that claimant submitted additional medical evidence to the district director and timely requested revision of the proposed decision and order on November 18, 2003, within thirty days after its issuance on October 24, 2003. Director’s Exhibits 14, 18. By letter dated November 21, 2003, the district director declined to consider the new evidence, but

granted claimant an additional thirty days within which to either request revision of the proposed decision and order based on the evidence in the existing record, or to request a hearing before an administrative law judge. Director's Exhibit 19. Claimant complied with the deadline set by the district director, as sanctioned by the regulations, and requested a hearing on December 16, 2003. *See* 20 C.F.R. §725.419(c); Director's Exhibit 16. On January 9, 2004, the district director notified employer that claimant had filed a timely request for a hearing, Director's Exhibit 17, and referred the case for formal hearing on March 16, 2004, Director's Exhibit 21. Thus, the Office of Administrative Law Judges properly exercised jurisdiction over the claim, *see* 20 C.F.R. §725.421(a), and we reject employer's arguments as unsupported by the record.

As the administrative law judge's findings on the merits of entitlement are unchallenged on appeal, we affirm his award of survivor's benefits. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge