

BRB No. 08-0712 BLA

I.V. )  
(Widow of J.V.) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 )  
CEDAR COAL COMPANY ) DATE ISSUED: 06/23/2009  
 )  
Employer-Respondent )  
 )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order Granting Employer's Motion for Summary Judgment of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

I.V., Lizemore, West Virginia, *pro se*.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant,<sup>1</sup> without the assistance of counsel, appeals the Decision and Order Granting Employer's Motion for Summary Judgment (08-BLA-5338) of Administrative Law Judge Daniel L. Leland (the administrative law judge) denying benefits 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 denied this subsequent survivor's claim in accordance with 20 C.F.R. §725.309(d)(3), as he found that claimant failed to establish a change in an applicable condition of entitlement.

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<sup>1</sup> Claimant is the widow of the miner, who died on January 13, 1989. Director's Exhibit 8.

On appeal, claimant generally challenges the administrative law judge's denial of survivor's benefits. Neither employer nor the Director, Office of Workers' Compensation Programs, has filed a response brief in this appeal.

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. *McFall v. Jewell Ridge Coal Co.*, 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The regulations provide that a subsequent claim, filed more than one year after the effective date of a final order denying a claim, must be denied unless the claimant demonstrates that one of the applicable conditions of entitlement has changed since the date upon which the order denying the prior claim became final. 20 C.F.R. §725.309(d). A subsequent claim filed by a surviving spouse shall be denied unless the applicable conditions of entitlement pursuant to 20 C.F.R. §725.212 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); *see Boden v. G.M. & W. Coal Co.*, 23 BLR 1-38, 1-40 (2004); *see also Watts v. Peabody Coal Co.*, 17 BLR 1-68, 1-70 (1992); *Mack v. Matoaka Kitchekan Fuel*, 12 BLR 1-197, 1-199 (1989).

In this case, claimant filed her initial claim for survivor's benefits on February 16, 1989. Director's Exhibit 1. On February 24, 1992, Administrative Law Judge Gerald M. Tierney issued a Decision and Order denying benefits because claimant failed to establish that the miner's death was due to pneumoconiosis. *Id.* The Board affirmed Judge Tierney's denial of benefits. [*I.V.*] *v. Cedar Coal Co.*, BRB No. 92-1275 BLA (Mar. 17, 1993) (unpub.). Claimant took no further action with respect to this claim. Claimant filed this claim for survivor's benefits on August 29, 2007, more than one year after the denial of her initial claim. Director's Exhibit 2. This claim was denied by the district director on December 3, 2007 because it was a subsequent survivor's claim. Director's Exhibit 11. In response to claimant's appeal of the denial, the case was forwarded to the Office of Administrative Law Judges for a formal hearing. Director's Exhibits 12, 15. Employer filed a Motion for Summary Judgment on June 2, 2008. Because the condition of entitlement that claimant failed to demonstrate in her initial claim related solely to the miner's physical condition at the time of his death, *i.e.*, whether the miner's death was due to pneumoconiosis, the administrative law judge properly found that entitlement to survivor's benefits was precluded. 20 C.F.R. §725.309(d)(3); Decision and Order at 2. Because the administrative law judge's findings pursuant to Section 725.309(d)(3) are in accordance with law, we affirm his denial of survivor's benefits.

Accordingly, the administrative law judge's Decision and Order Granting Employer's Motion for Summary Judgment is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge