

BRB No. 07-0661 BLA

J. W. )  
(Son of P. W.) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 )  
DIRECTOR, OFFICE OF WORKERS' ) DATE ISSUED: 03/27/2008  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
Respondent ) DECISION and ORDER

Appeal of the Decision and Order on the Record Denying Survivor's Benefits of Janice K. Bullard, United States Department of Labor.

J. W., Tuscaloosa, Alabama, *pro se*.

Rita Roppolo (Gregory F. Jacob, 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the benefit of counsel, the Decision and Order (2006-BLA-5188) of Administrative Law Judge Janice K. Bullard rendered 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). Pursuant to claimant's<sup>1</sup> request for a decision on the record, the administrative law judge determined that claimant's previous claim had been denied because claimant failed to establish any element of entitlement, and that the present claim, filed on July 27, 2005, was subject to

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<sup>1</sup> Claimant is the son of the miner who died on July 30, 1978. Claimant's Exhibit 1.

the provisions at 20 C.F.R. §725.309(d).<sup>2</sup> The administrative law judge then found that the evidence failed to establish that claimant became disabled prior to age twenty-two, and accordingly, was not entitled to benefits in his own right. *See* 20 C.F.R. §725.221. The administrative law judge further determined that, assuming *arguendo*, claimant had established eligibility as a dependent, the newly submitted evidence did not establish the presence of pneumoconiosis or that the miner's death was due to pneumoconiosis. The administrative law judge, therefore, found that an applicable condition of entitlement had not changed since the date upon which the denial of claimant's prior claim became final. *See* 20 C.F.R. §725.309(d). Accordingly, the administrative law judge denied claimant's request for survivor's benefits as a disabled adult child of a deceased miner.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director responds, urging affirmance of the denial of benefits.

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'Keefe 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 requisite standards of relationship and dependency are met. 20 C.F.R. §725.218(a). An unmarried adult child satisfies the dependency requirement if the child is under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. §423(d), that began before the child attained age twenty-two. 30 U.S.C. §902(g); 20 C.F.R. §§725.209(a)(2)(ii), 725.221. The Social Security Act defines "disability" as "the inability to engage in substantial gainful activity by reason of any medically demonstrable physical or mental impairment." 42 U.S.C. §423(d)(1)(A); *Tackett v. Director, OWCP*, 10 BLR 1-117, 1-118 (1987).

In the instant case, the evidence is uncontroverted that claimant worked independently for years, and earned wages that qualified him for his own Social Security benefits when he became disabled at the age of fifty. Director's Exhibits 5, 7; Decision and Order at 3-4. Thus, the administrative law judge's finding that claimant failed to establish his disability before he 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);

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<sup>2</sup> The administrative law judge determined that claimant's original claim, filed April 28, 2003, was denied by the district director on June 25, 2004. Decision and Order at 2; Director's Exhibit 1.

725.221; *Hite v. Eastern Associated Coal Co.*, 21 BLR 1-46 (1997); *Wallen v. Director, OWCP*, 13 BLR 1-64 (1989).

Consequently, we affirm the administrative law judge's finding that claimant was not entitled to survivor's benefits because claimant did not establish his eligibility as a dependent 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 a change in applicable condition of entitlement pursuant to Section 725.309(d). *See generally Kidida v. Director, OWCP*, 769 F.2d 165, 8 BLR 2-28 (3d Cir. 1985).

Accordingly, the administrative law judge's Decision and Order on the Record Denying Survivor's Benefits 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