

BRB No. 97-1189 BLA

SUE PIKULIN)	
(Widow of CHARLES PIKULIN))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BELLAIRE CORPORATION)	DATE ISSUED:
)	
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 of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Sue Pikulin, Powhatan Point, Ohio, *pro se*.

John C. Artz (Polito & Smock), Pittsburgh, Pennsylvania, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order (97-BLA-430) of Administrative Law Judge Thomas M. Burke denying benefits on a 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). This claim involves a duplicate claim. Claimant's previous survivor's claim was ultimately denied in a Decision and Order issued by the Board. Director's Exhibits 16, 17, 19; *Pikulin v. North American Coal Corp.*, BRB

¹ Claimant is Sue Pikulin, the miner's widow. The miner, Charles Pikulin, filed a claim for benefits on January 17, 1979 and died on September 3, 1980. Director's Exhibits 3, 17, 19. On or around the date of the miner's death, claimant filed a survivor's claim which was merged with the miner's claim. Director's Exhibits 16, 17.

No. 82-752 BLA (Nov. 26, 1984)(unpub.). Claimant filed the instant survivor's claim for benefits on June 3, 1993. Director's Exhibit 1. Administrative Law Judge Michael P. Lesniak found that, because claimant's second claim can not be considered a petition for modification pursuant to 20 C.F.R. §725.310, the claim must be denied as a duplicate claim pursuant 20 C.F.R. §725.309. Director's Exhibit 19. Subsequently, claimant filed an appeal of the denial of benefits and offered new evidence in support of her claim. The Board determined that claimant's appeal was in fact a petition for modification and remanded the case for consideration of claimant's petition for modification of Judge Lesniak's denial of benefits. *Pikulin v. North American Coal Corp.*, BRB 96-0580 BLA (Aug. 8, 1996)(Order)(unpub.).

In the instant Decision and Order, the administrative law judge found that claimant's second claim is not a petition for modification pursuant to Section 725.310, but is instead a duplicate claim which must be denied pursuant to Section 725.309 and denied claimant's petition for modification as it sought to modify a duplicate claim which was denied as a matter of law pursuant to Section 725.309. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate on 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. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act 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 that a duplicate survivor's claim must be denied on the basis of the earlier claim unless the latter claim is a request for modification and the requirements of Section 725.310 are met (*i.e.*, the subsequent claim is filed within one year of the last denial of the earlier claim. See 20 C.F.R. §§725.309(d), 725.310. See *Watts v. Peabody Coal Co.*, 17 BLR 1-68 (1992); *Jordan v. Director, OWCP*, 892 F.2d 482, 489, 13 BLR 2-184, 2-194 (6th Cir. 1989); *Mack v. Matoaka Kitchikan Fuel*, 12 BLR 1-197 (1989); *Clark v. Director, OWCP*, 838 F.2d 197, 200, 11 BLR 2-46, 2-50-51 (6th Cir. 1988).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence and contain no reversible error therein. Claimant's initial survivor's claim was denied on November 26, 1984. Director's Exhibit 16. Claimant filed her second survivor's claim on June 3, 1993. Director's Exhibit 1. Because the second claim was filed over nine years after the denial of the first survivor's claim, the administrative law judge properly found that the second survivor's claim did not constitute a petition for modification pursuant to Section 725.310 and that the

second survivor's claim must be denied as a duplicate claim pursuant to Section 725.309(d). *See Watts, supra; Jordan, supra; Mack, supra; Clark, supra.* Thus, we affirm the administrative law judge's denial of benefits on claimant's second survivor's claim as it is supported by substantial evidence and in accordance with law.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge