

BRB No. 01-0816 BLA

EARL D. TAYLOR)
(Son of GARLAND TAYLOR, deceased))
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED:
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits on Remand of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Earl D. Taylor, Wayne, West Virginia, *pro se*.

Mary Forrest-Doyle (Eugene Scalia, Solicitor of Labor; Donald S. Shire, 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, McGRANERY and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order -

¹ Claimant, Earl D. Taylor, is the son of Garland Taylor, the miner, who died in 1985. Director's Exhibit 5. Based on claims filed in 1970 and 1971 with the Social Security Administration (SSA) for black lung benefits, the miner received black lung disability benefits until his death in 1985. Director's Exhibits 4, 5. The miner's widow, Lucille Taylor, continued to receive augmented survivor's benefits until her death in 1987. Director's Exhibits 6, 8, 9. Similarly, claimant received augmented benefits, as a surviving disabled adult child of Garland and Lucille Taylor, for the period of December 1, 1985, the month he was determined to be disabled by the Social Security Administration (SSA) until

Denying Benefits on Remand (00-BLA-0815) of Administrative Law Judge Michael P. Lesniak 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).² Following the deaths of both of his parents, claimant filed for Black Lung Benefits as the dependent child of a deceased miner in 1987, at the age of 44. This case is on appeal to the Board for the third time. The procedural history of this case is not dispositive herein and is set forth in the Board's prior decision. *Taylor v. Director, OWCP*, BRB No. 98-0264 BLA (Nov. 6, 1998) (unpub.); Director's Exhibit 71. In that decision, the Board granted the request of the Director, Office of Workers' Compensation Programs (the Director) to remand the case to the district director for further development of the evidence, and more specifically, to inform claimant that he could obtain existing medical records associated with the disability claim he filed with the Social Security Administration (SSA) and submit this evidence in support of his claim for black lung benefits based on his status as a dependent child of a deceased miner.³ Accordingly, the Board vacated the Decision and Order Denying Modification and the Decision on Motion for Reconsideration rendered by Administrative Law Judge George P. Morin and remanded the case to the district director for further development of the evidence. Consequently, claimant submitted to the district director the medical records associated with his 1985 Social Security disability claim along with medical records dating from 1991-1998. The district director, however, again denied benefits because he found that the medical records submitted did not establish the onset of claimant's disability before the age of 18. Pursuant to claimant's request for a decision on the record, the administrative law judge considered the evidence, and determined that the evidence failed to establish that claimant became disabled prior to age 18 or 22.⁴ Accordingly, the administrative law judge

May 31, 1987, the month prior to his mother's death. Director's Exhibit 14.

² The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³ The SSA awarded claimant supplemental security income based on a determination that he was disabled as of December 3, 1985, the date he filed his application for SSA benefits. Director's Exhibit 13.

⁴ The newly promulgated Section 725.221 provides:

For the purposes of determining whether a child was dependent upon a deceased miner, the provisions of §725.209 shall be applicable, except that for purposes of determining the eligibility of a child who is under a disability as

denied claimant's request for survivor's benefits as a dependent 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

defined in section 223(d) of the Social Security Act, such disability must have begun before the child attained age 22, or in the case of a student, before the child ceased to be a student.

20 C.F.R. §725.221.

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 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 attained age 22.⁵ 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). 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); *Tackett, supra*. Benefits commence with the first month in which all of the conditions of entitlement are met, and continue until the month before the month in which such child dies, marries, or the disability ceases. 20 C.F.R. §725.219.

After careful consideration of the administrative law judge’s Decision and Order, the arguments on appeal, and the evidence of record, we conclude that the administrative law judge’s Decision and Order is supported by substantial evidence and contains no reversible error because the administrative law judge properly found that the record did not contain any reliable medical evidence establishing the onset of claimant’s disability before the age of 22. *See Hite v. Eastern Assoc. Coal Co.*, 21 BLR 1-46 (1997); *Wallen v. Director, OWCP*, 13 BLR 1-64 (1989); Decision and Order at 3. Specifically, the administrative law judge permissibly determined that the purported 1955 medical bill evidencing a disabling injury at the age 12 was insufficient to establish disability. *See Director’s Exhibit 20; Zbosnik v. Badger Coal Co.*, 759 F.2d 1187, 7 BLR 2-202 (4th Cir. 1985); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); Decision and Order at 3.⁶ Furthermore, the administrative law judge rationally determined that the fact that claimant earned wages after the age of 18⁷ and that

⁵ The administrative law judge carefully considered the newly revised regulation pursuant to Section 725.221, the only contested issue in the instant case, and found that the new regulation requires proof of disability before age 22, rather than before age 18 pursuant to the old provision. The administrative law judge concluded, nevertheless, that the outcome of this case was not altered by using the new standard, 20 C.F.R. §725.221, because there was no credible evidence establishing the onset of disability before the age of 22. Decision and Order at 2, 4.

⁶ Claimant was born on February 7, 1943. Director’s Exhibit 12.

⁷ At a formal hearing held before Administrative Law Judge Robert J. Feldman on March 22, 1993, claimant testified that he worked for four or five years as a janitor for the Wayne County School Board. Director’s Exhibit 24 at 14, 19, 22. Furthermore, the record contains tax withholding statements indicating claimant’s earnings from the Wayne County

neither the miner nor his widow asserted that claimant was a disabled dependent in their respective claims filed in 1970, 1971, and 1986, weighed against a finding that claimant was disabled before the age of 22. *See Wallen, supra; Tackett, supra.* Likewise, the administrative law judge rationally found that the medical evidence obtained in 1985 and 1986 and submitted in support of claimant's 1985 Social Security disability claim, and the medical evidence obtained in 1998 was insufficient to demonstrate that claimant was disabled before age 22. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145 (1984); *Lupasky v. Director, OWCP*, 7 BLR 1-532, 1-534 (1984); Decision and Order at 4 n.2; Director's Exhibits 13, 84. Thus, because the administrative law judge's finding, that claimant was not disabled before age 22 pursuant to Section 725.221, is supported by substantial evidence and in accordance with applicable law, it is affirmed.

Board of Education for the period of 1962 to 1964. Director's Exhibit 34.

Accordingly, the Decision and Order - Denying Benefits on Remand of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge