

BRB No. 09-0121 BLA

F.H.)	
(Divorced Widow of E.H.))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 09/16/2009
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Survivor's Benefits of Administrative Law Judge William S. Colwell, United States Department of Labor.

F.H., Byrdtown, Tennessee, *pro se*.

Rita A. Roppolo (Carol A. DeDeo, Deputy Solicitor; Rae Ellen Frank James, 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:

Claimant¹ appeals, without the assistance of counsel, the Decision and Order Denying Survivor's Benefits (2007-BLA-5214) of Administrative Law Judge William S. Colwell with respect to a survivor's claim filed on March 31, 2004, 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). Director's Exhibit 4. The administrative law judge adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718 and found that claimant failed to establish she was dependent on the miner, as required by 20 C.F.R. §725.217. Accordingly, the administrative law judge denied benefits.

On appeal, claimant explains her decision not to seek support from the miner at the time of their divorce and appeals the administrative law judge's decision denying her benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the decision because the evidence failed to prove that claimant was dependent on the miner at the time of his death, as required by 20 C.F.R. §§ 725.212, 725.217.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue 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'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Section 725.217 provides that:

An individual who is the miner's surviving divorced spouse . . . shall be determined to have been dependent on the miner if, for the month before the month in which the miner died:

- (a) The individual was receiving at least one-half of his or her support from the miner . . .; or
- (b) The individual was receiving substantial contributions from the miner pursuant to a written agreement . . .; or
- (c) A court order required the miner to furnish substantial contributions to the individual's support

¹ Claimant is the surviving divorced spouse of the miner, E.H., who died on April 14, 2003. Director's Exhibit 8. At the time of his death, the miner was receiving benefits awarded under the Black Lung Benefits Act. Director's Exhibit 1.

20 C.F.R. §725.217.

In considering claimant's dependency, the administrative law judge determined that there was no "written agreement" in the record. Decision and Order at 3; *see* 20 C.F.R. §725.217(b). He then proceeded to determine whether there was a court order requiring the miner to "furnish substantial contributions" to claimant, or whether claimant received at least one-half of her support from the miner. *Id.* at 3; *see* 20 C.F.R. §725.217(a),(c). The administrative law judge found that the Final Divorce Decree between claimant and the miner provided for all real and personal property and debt to be split between the parties.² Decision and Order at 3-4; Director's Exhibit 9. The administrative law judge determined that the real property awarded to claimant in the divorce was to be part of her alimony. *Id.* The administrative law judge also found that no further provisions regarding "alimony" or regular monetary contributions by the miner to claimant were included in the divorce decree. *Id.*; *see* 20 C.F.R. §725.217(a).

The administrative law judge also considered claimant's hearing testimony, stating that she never asked for alimony or any other monetary support from the miner after the divorce because she "knew he wouldn't pay alimony if [she] asked for it." Hearing Transcript at 13. Further, claimant testified that "the reason [she] didn't ask for alimony was [because she] feared for [her] life and . . . just wanted to get out of the situation." *Id.* at 14. From the time of the divorce until the miner's death, claimant stated that she did not receive any monetary support from the miner. *Id.* at 19.

Based on claimant's hearing testimony that she did not receive any monetary contributions from the miner after their divorce, the administrative law judge found that claimant had failed to establish "dependency" on the miner, as required pursuant to 20 C.F.R. §725.217 and denied benefits.³ Decision and Order at 5.

² The decree provided that:

The parties own 10 head of cattle. It is orders [sic] of this Court that said cattle be sold and the funds be applied to the . . . indebtedness. If the cattle have been sold, the party receiving the funds must account for said funds and apply [them] to the . . . indebtedness. It is the intention of the Court for Plaintiff to have this as part of her alimony.

Director's Exhibit 9.

³ The administrative law judge also credited claimant's testimony regarding the miner's "abominable" conduct toward her, but he properly determined that this evidence

We affirm the administrative law judge's decision denying benefits as it is supported by substantial evidence. First, the administrative law judge properly determined that the record did not contain a "written agreement" providing for substantial contributions from the miner to the claimant. Therefore, claimant failed to prove dependency under 20 C.F.R. §725.217(b). In addition, by claimant's own admission, she did not seek or receive any monetary support from the miner after their divorce. As a result, she failed to establish dependency under 20 C.F.R. §725.217(a). Further, the administrative law judge rationally determined that the divorce decree failed to provide for any alimony payments or regular monetary contributions as defined by 20 C.F.R. §725.233.⁴ Accordingly, claimant failed to prove dependency under 20 C.F.R. §725.217(c). Consequently, the administrative law judge properly found that claimant did not meet her burden of proving that she was dependent on the miner at the time of the miner's death pursuant to 20 C.F.R. §725.217. See *Ensinger v. Director, OWCP*, 833 F.2d 678, 10 BLR 2-329 (7th Cir. 1987); *Walker v. Director, OWCP*, 9 BLR 1-233 (1987). Since the administrative law judge determined that claimant failed to meet her burden pursuant to 20 C.F.R. §725.217, it was unnecessary for him to consider death causation pursuant to 20 C.F.R. §718.205(c).

was irrelevant to the issue of dependency pursuant to 20 C.F.R. §725.217. Decision and Order at 5.

⁴ The regulations define the terms "regular contributions" and "substantial contributions" as contributions that are customary and sufficient to constitute a material factor in the cost of the individual's support. 20 C.F.R. §725.233(c).

Accordingly, the administrative law judge's Decision and Order Denying Survivor's Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge