

BRB No. 97-0542 BLA

MARY L. McKINNEY)
(Daughter of ANDREW McKINNEY))
)
Claimant-Petitioner)
)
v.)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order-Denying Benefits of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Mary L. McKinney, Farmington Hills, Michigan, *pro se*.

Jeffrey S. Goldberg (J. Davitt McAteer, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order (92-BLA-0869) of Administrative Law Judge Mollie W. Neal denying survivor's 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). Claimant filed for survivor's benefits on August 15, 1991. Claimant seeks benefits on the basis that she is the disabled adult child of the deceased miner.² The administrative law judge found that while claimant

¹Claimant is Mary McKinney, the daughter of Andrew McKinney, the deceased miner, who died on October 15, 1944. Director's Exhibit 3.

²The miner's widow, Lucille McKinney, filed a claim for survivor's benefits on March 13, 1977, and was awarded benefits on December 20, 1979. Director's Exhibit 2. Claimant, however, was not identified as a dependent of Lucille McKinney for purposes of argumentation of survivor's benefits. See 20 C.F.R. §725.209. Lucille McKinney died on

met the required standards of relationship to the deceased miner, see 20 C.F.R. §725.220, claimant failed to establish that she was dependent upon the deceased miner as required under 20 C.F.R. §725.221. Specifically, the administrative law judge found that claimant failed to demonstrate that her current disability began prior to attaining the age of eighteen. Accordingly, the administrative law judge denied survivor's benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, responds in support 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).

April 18, 1985. Director's Exhibit 4. Inasmuch as claimant is seeking benefits in her own right, the requirements of 20 C.F.R. §§725.218-725.221 govern the instant claim.

After consideration of the Decision and Order and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial evidence and contains no reversible error. As the administrative law judge correctly noted, in order for claimant to establish that she was dependent on the deceased miner, she must demonstrate that she is currently under a disability and that such disability occurred prior to attaining the age of eighteen. 20 C.F.R. §725.221;³ see *Tackett v. Director, OWCP*, 10 BLR 1-117 (1987); Decision and Order at 5. The Board has held that “[s]tatements of a claimant, standing alone, are insufficient to prove the existence of disability, thus medical evidence must be produced.” *Tackett*, 10 BLR at 1-118. In the instant case, the administrative law judge found that the evidence of record establishes that claimant is presently unable to maintain independent living. Decision and Order at 4. The administrative law judge further noted that pursuant to a claim filed on December 16, 1970, the Social Security Administration (SSA) determined that claimant was under a medically determinable impairment which prevented her from engaging in substantial gainful activity since May 15, 1969.⁴ *Id* at 4-5. However, the administrative law judge concluded that claimant was not entitled to benefits because, notwithstanding her contention that she was disabled prior to age eighteen⁵ due to a seizure disorder, the record was devoid of medical documentation of the “severity, frequency, and symptoms...of [c]laimant’s seizure disorder during her childhood.” Decision and Order at 5.

While the record contains lay testimony and medical evidence that indicates a history of epilepsy and seizure disorder as early as age five, Director’s Exhibit 10; Claimant’s Exhibit 1; Hearing Transcript at 7-10, the administrative law judge correctly noted that the medical evidence does not address the “severity...of [c]laimant’s seizure disorder during her childhood.” Decision and Order at 5. And as previously noted, lay

³Section 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 defined in section 223(d) of the Social Security Act, ***such disability must have begun before the child attained age 18***, or in the case of a student, before the child ceased to be a student.

20 C.F.R. §725.221 (emphasis added).

⁴Although the Social Security Administration Hearing Examiner’s Decision, dated January 5, 1972, is a part of the record, Director’s Exhibit 8, the administrative law judge correctly noted that the medical records and findings which formed the bases for the award of disability benefits are not included in the record. Decision and Order at 5.

⁵Claimant was born in 1928, Director’s Exhibit 1, and attained the age of eighteen on May 2, 1946.

testimony alone is insufficient to satisfy claimant's burden of proof. *Tackett*, 10 BLR at 1-118. Absent credible medical evidence of claimant's disability prior to attaining the age of eighteen on May 2, 1946, the administrative law judge properly concluded that claimant failed to establish her dependency upon the deceased miner pursuant to 20 C.F.R. §725.221. Consequently, we affirm the administrative law judge's finding.⁶

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

⁶The administrative law judge also correctly noted that since claimant's mother did not claim her as a dependent for purposes of augmentation, claimant cannot meet the dependency requirements of 20 C.F.R. §725.209. See *Hite v. Eastern Associated Coal Co.*, 21 BLR 1-46 (1997); Decision and Order at 6. Because claimant's mother died more than a decade ago, and is no longer receiving survivor's benefits, the December 20, 1979 award of survivor's benefits is not subject to modification under 20 C.F.R. §725.310.