

UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT

**Robert West v. Director, Office of Workers' Compensation Programs,
United States Department of Labor**

Robert West v. Director, Office of Workers' Compensation Programs, United States Department of Labor, 896 F.2d 308 (8th Cir. 1990) · No. 88-2866 · Decided February 13, 1990

SUMMARY

In this Black Lung Benefits Act case, the Eighth Circuit affirmed the denial of benefits, holding that the claimant's 1979 claim was abandoned under 20 C.F.R. § 725.410(c)(1) when he failed to respond within 60 days to a denial letter, and his 1983 claim did not merge with the earlier claim because it was not "pending." The court rejected arguments that the Department failed to provide proper notice, finding that the denial letter complied with applicable regulations and that the one-year modification period under § 725.310(a) was not fundamentally unfair. On the merits, substantial evidence supported the ALJ's finding that the claimant failed to establish pneumoconiosis under 20 C.F.R. Part 718, as more recent negative x-rays and physician reports outweighed a single positive x-ray. The case addresses claim abandonment, merger, modification deadlines, and evidentiary standards for pneumoconiosis.

CASE DETAILS

COURT	United States Court of Appeals, Eighth Circuit
WRITING FOR THE COURT	McMILLIAN; LAY; SNEED
JURISDICTION	Federal
DECIDED	February 13, 1990
DOCKET	88-2866
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of an order of the Benefits Review Board of the Department of Labor denying black lung benefits.
STANDARD OF REVIEW	The Board must affirm an ALJ's factual findings if supported by substantial evidence. The court reviews the Board's decision for errors of law and adherence to the substantial evidence standard.
PRECEDENTIAL VALUE	Published
PARTIES	Robert West v. Director, Office of Workers' Compensation Programs, United States Department of Labor

TOPICS

appellate procedure civil procedure evidence employment law

PRACTICE AREAS

Administrative Law Black Lung Benefits

QUESTIONS PRESENTED

1. Whether West's 1979 claim was abandoned such that his 1983 claim could be treated as a new claim under Part 718.
2. Whether the 1983 claim should merge with the 1979 claim under 20 C.F.R. § 725.309(d).
3. Whether the ALJ's denial of the 1983 claim is supported by substantial evidence.

HOLDINGS

1. West's 1979 claim was abandoned because he failed to respond to the Department's denial letter within 60 days, triggering abandonment under 20 C.F.R. § 725.410(c)(1).
2. The 1983 claim did not merge with the 1979 claim because the 1979 claim was not 'pending' at the time of the 1983 filing; it had been finally denied as of May 21, 1980, one year after the denial letter, due to West's failure to request modification within that period.
3. The ALJ's finding that West failed to establish pneumoconiosis is supported by substantial evidence.

KEY QUOTATIONS

“If the evidence submitted does not support an initial finding of eligibility, the deputy commissioner shall so notify the claimant in writing. This notification shall specify the reasons why the claim cannot be approved, the additional evidence necessary to establish entitlement, the right of the claimant to submit additional evidence, and the right to request a hearing. Within 60 days from the mailing of such notice, unless such period is extended by the deputy commissioner for good cause shown, the claimant may submit new evidence or request a hearing. If the claimant: (1) Takes no action within the specified 60 day period, the claim shall be considered denied by reason of abandonment (see Sec. 725.409).” (at 310 n.4)

“In the case of a claimant who files more than one claim for benefits under this part, the later claim shall be merged with the earlier claim for all purposes if the earlier claim is still pending. If the earlier miner's claim has been finally denied, the later claim shall also be denied, on the grounds of the prior denial, unless the deputy commissioner determines that there has been a material change in conditions or the later claim is a request for modification and the requirements of Sec. 725.310 are met.” (at 311 n.6)

FACTUAL BACKGROUND

Robert West worked in coal mines for six years. He filed a claim for black lung benefits in 1979. After submitting some evidence, the Department denied his claim on May 21, 1979, and West did not respond. Four years later, in 1983, he filed a new claim. The ALJ applied the Part 718 regulations and found that West had not established pneumoconiosis, primarily because only one x-ray out of six suggested the disease and more recent

x-rays were negative, and the physicians' reports were either based on an inaccurate work history or contradicted.

PROCEDURAL HISTORY

West filed a black lung benefits claim in 1979, which was denied; he did not respond. He filed a new claim in 1983. The ALJ denied the 1983 claim under 20 C.F.R. Part 718. The Benefits Review Board affirmed. West petitioned for review.

DISPOSITION

affirmed

CASES CITED

- *Tonelli v. Director, OWCP*, 878 F.2d 1083 (8th Cir. 1989)
- *U.S. Pipe and Foundry Co. v. Webb*, 595 F.2d 264 (5th Cir. 1979)
- *Mullins Coal Co. v. Director, OWCP*, 484 U.S. 135 (1987)
- *Clark v. Crown Construction Co.*, 887 F.2d 149 (8th Cir. 1989)
- *Pittston Coal Group v. Sebben*, 488 U.S. 105 (1988)
- *Newman v. Director, OWCP*, 745 F.2d 1162 (8th Cir. 1984)
- *Underhill v. Peabody Coal Co.*, 687 F.2d 217 (7th Cir. 1982)