

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Tonelli v. Director, Office of Workers' Compensation Programs

878 F.2d 1083 (8th Cir. 1989) · Decided June 28, 1989

SUMMARY

The Eighth Circuit affirmed the denial of Charles Tonelli’s 1982 claim for benefits under the Black Lung Benefits Act. The court held that Tonelli had abandoned his 1974 claim by failing to respond to the Department of Labor’s notice, that the notice was adequate, and that his later claim did not merge with or revive the abandoned claim. The court also upheld evaluation of the 1982 claim under the permanent entitlement criteria in 20 C.F.R. Part 718.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Heaney, Senior Circuit Judge; Gibson; Heaney; Henley
JURISDICTION	Federal
DECIDED	June 28, 1989
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of the Benefits Review Board's decision affirming an administrative law judge's denial of Tonelli's claim for black lung benefits.
STANDARD OF REVIEW	The court reviews the administrative law judge's and Benefits Review Board's decisions to determine whether they are rational, supported by substantial evidence, and consistent with applicable law. Factual findings are upheld if supported by substantial evidence on the record as a whole.
PRECEDENTIAL VALUE	Published precedential decision of the United States Court of Appeals for the Eighth Circuit.
PARTIES	Charles Tonelli v. Director, Office of Workers' Compensation Programs

TOPICS

judicial review of agency action

agency adjudication

administrative law

federal employment law

civil procedure

PRACTICE AREAS

Administrative law

Federal benefits law

Black lung benefits

QUESTIONS PRESENTED

1. Whether substantial evidence supported the finding that Tonelli received the July 10, 1979 notice and abandoned his 1974 claim.
2. Whether the Department of Labor provided legally sufficient notice that the 1974 claim would be denied by abandonment.
3. Whether Tonelli's 1982 claim had to be merged with his 1974 claim and reviewed under 20 C.F.R. Part 727.
4. Whether the Department's notice procedure was invalid because it did not strictly follow incorporated Longshore and Harbor Workers' Compensation Act procedures.
5. Whether Tonelli's 1982 claim should be treated as a request for modification of the 1979 denial.

HOLDINGS

1. The finding that Tonelli received the July 10, 1979 notice and abandoned his 1974 claim was supported by substantial evidence.
2. The July 10, 1979 notice adequately informed Tonelli that his claim would be denied if he failed to respond, and the Department was not required to send an additional 30-day abandonment notice under 20 C.F.R. § 725.409(b).
3. The 1982 claim did not have to be merged with the abandoned 1974 claim or reviewed under Part 727; a finally denied claim, including one denied by abandonment, cannot be revived merely by filing a subsequent claim.
4. The variance between the notice procedure in 20 C.F.R. § 725.410 and the procedures in 33 U.S.C. § 919 was permissible.

KEY QUOTATIONS

“Once a claim reviewed under Part 727 has been finally denied, even due to abandonment, see 20 C.F.R. § 727.102(b)(5), it cannot be revived merely by filing a subsequent claim.” (878 F.2d at 1087)

“The decision of the BRB is therefore affirmed.” (878 F.2d at 1087)

FACTUAL BACKGROUND

Tonelli filed an initial black lung benefits claim in 1974. During the Department of Labor's 1979 review, he was notified that his file lacked sufficient medical evidence and that failure to submit evidence or request a hearing would result in denial by abandonment; he did not respond. After filing a second claim in 1982, he argued that the earlier claim had not been abandoned and that the two claims should be merged so that the later claim would receive the more favorable Part 727 review.

PROCEDURAL HISTORY

Tonelli filed a 1974 claim for black lung benefits, which was reviewed and denied by the Department of Labor in 1979 after he failed to submit additional evidence or request a hearing. He filed a second claim in 1982. The administrative law judge determined that the 1974 claim had been abandoned, evaluated the 1982 claim under 20 C.F.R. Part 718, and denied benefits because Tonelli was not totally disabled due to pneumoconiosis. The Benefits Review Board affirmed, and the Eighth Circuit affirmed the Board.

DISPOSITION

affirmed

CASES CITED

- Old Ben Coal Co. v. Luker, 826 F.2d 688, 691-92 (7th Cir. 1987)
- Brazzelle v. Director, Office of Workers' Compensation, 803 F.2d 934, 936 (8th Cir. 1986)
- Clark v. Director, O.W.C.P., U.S. Department of Labor, 838 F.2d 197, 199-200 (6th Cir. 1988)
- Spese v. Peabody Coal Co., 11 Black Lung Rep. (MB) 1-174 (Ben. Rev. Bd. 1988)
- Newman v. Director, OWCP, 745 F.2d 1162, 1164 n.2 (8th Cir. 1984)
- Pittston Coal Group v. Sebben, 488 U.S. 105, 109 S. Ct. 414, 102 L. Ed. 2d 408 (1988)
- Patton v. Director, OWCP, 763 F.2d 553, 559 (3d Cir. 1985)
- U.S. Pipe and Foundry Co. v. Webb, 595 F.2d 264, 272-74 (5th Cir. 1979)