

BRB No. 09-0750 BLA

NORMA G. CAMPBELL)	
(Widow of ERNEST CAMPBELL))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
B & G CONSTRUCTION COMPANY, INCORPORATED)	DATE ISSUED: 08/30/2010
)	
and)	
)	
STATE WORKERS' INSURANCE FUND)	
)	
Employer/Carrier-Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Lynda D. Glagola (Lungs at Work), McMurray, Pennsylvania, lay representative, for claimant.

Edward K. Dixon (Zimmer Kunz P.L.L.C.), Pittsburgh, Pennsylvania, for employer/carrier.

Emily Goldberg-Kraft (M. Patricia Smith, Solicitor of Labor; Rae Ellen 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand Denying Benefits (2007-BLA-5499) of Administrative Law Judge Daniel L. Leland (the administrative law judge), with respect to a survivor's claim¹ filed on February 16, 2006, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act). In his prior Decision and Order on this claim, the administrative law judge accepted the parties' stipulation that the miner suffered from pneumoconiosis arising out of coal mine employment. The administrative law judge, however, found that the evidence was insufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. Claimant appealed. Finding that the administrative law judge failed to properly explain the bases for his credibility determinations, as required by the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), the Board vacated the administrative law judge's decision denying benefits and remanded the case for the administrative law judge to reconsider whether the evidence established death due to pneumoconiosis pursuant to Section 718.205(c). On remand, the administrative law judge again found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), and denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the medical opinion evidence did not establish death due to pneumoconiosis at Section 718.205(c). Employer responds, asserting that the administrative law judge's decision on remand denying benefits should be affirmed. The Director, Office of Workers' Compensation Programs (the Director), responds, asserting that the administrative law judge erred in evaluating the medical opinion evidence at Section 718.205(c) and that the case must, therefore, be remanded for reconsideration.

On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. The amendments, in pertinent part, revive Section 422(l) of the Act, 30 U.S.C. §932(l), which holds that an eligible survivor of a miner who filed a successful claim for benefits is automatically entitled to survivor's benefits, without the burden of reestablishing entitlement. 30 U.S.C. §932(l).

¹ Claimant is the widow of a miner, who died on April 4, 2005. The miner was receiving benefits pursuant to a claim filed during his lifetime. Director's Exhibit 10.

By Order dated May 4, 2010, the Board permitted the parties to submit supplemental briefing in this case to address the new amendments. Claimant filed a Motion for Order Awarding Survivor's Benefits, contending that the recent amendment to Section 422(l) of the Act mandates an award of benefits in her survivor's claim. The Director responds, stating that the recent amendment to Section 422(l), mandates an award of benefits, regardless of whether claimant is able to prove that pneumoconiosis hastened the miner's death. Employer responds, asserting that Section 422(l), as amended, provides only a rebuttable presumption of death due to pneumoconiosis, not automatic entitlement, and that the case must, therefore, be remanded for the administrative law judge to consider whether employer has rebutted the presumption of death due to pneumoconiosis.

Based on our review of the recent amendments to the Act, we agree with the Director and claimant that claimant is derivatively entitled to survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l), *amended by* Pub. L. No. 111-148, §1556(b) (2010), as her claim was filed after January 1, 2005, the claim was pending on March 23, 2010, and the miner was receiving benefits under a final award on his claim at the time of his death. We need not consider, therefore, any allegations of error regarding the administrative law judge's findings under Section 718.205(c).

Accordingly, the administrative law judge's Decision and Order on Remand Denying Benefits is reversed, and this case is remanded to the district director for the entry of an appropriate order.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge