

BRB No. 11-0759 BLA

FREDA CHAFFIN)	
(Widow of JESSIE CHAFFIN))	
)	
Claimant-Respondent)	
)	
v.)	
)	
PETER CAVE COAL COMPANY)	
)	DATE ISSUED: 06/22/2012
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Order of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer.

Barry H. Joyner (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:

Employer appeals the Order (11-BLA-5297) of Administrative Law Judge Thomas M. Burke awarding benefits on a claim filed 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). This case involves a survivor's claim filed on August 7, 2009.¹

On March 23, 2010, amendments to the Act affecting claims filed after January 1, 2005, were enacted. The amendments, in pertinent part, revive Section 932(l) of the Act, which provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. Pub. L. No. 111-148, §1556(b) (to be codified at 30 U.S.C. §932(l)).

On August 13, 2010, the district director denied benefits because he found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Director's Exhibit 20. At claimant's request, the case was forwarded to the Office of Administrative Law Judges for a formal hearing.

On June 10, 2011, claimant moved for a summary decision, arguing that there was no genuine issue of material fact concerning whether she was automatically entitled to benefits pursuant to amended Section 932(l). Neither employer nor the Director, Office of Workers' Compensation Programs (the Director), filed a response to claimant's motion for a summary decision.

In an Order dated July 12, 2011, the administrative law judge found that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l). Accordingly, the administrative law judge awarded survivor's benefits, commencing as of February 2010, the month in which the miner died.

On appeal, employer challenges the administrative law judge's application of amended Section 932(l) to this claim. Claimant responds in support of the administrative law judge's award of benefits. The Director also responds, urging the Board to affirm the administrative law judge's award of benefits. In a reply brief, employer reiterates its previous contentions.

¹ Claimant is the widow of the miner, who died on February 14, 2008. Director's Exhibit 11. During his lifetime, the miner filed a claim for benefits on January 26, 1999. In a "Third Decision and Order on Remand" dated January 29, 2010, Administrative law Judge Linda S. Chapman awarded benefits. By Decision and Order dated February 28, 2011, the Board affirmed Judge Chapman's award of benefits. *Chaffin v. Peter Cave Coal Co.*, BRB No. 10-0344 BLA (Feb. 28, 2011) (unpub.).

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.² 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).

Employer's sole contention of error is that the administrative law judge erred in applying amended Section 932(l) to award benefits in the survivor's claim, because the miner had not been found entitled to benefits at the time of his death. We disagree, and hold that amended Section 932(l) applies to the current claim, despite the fact that the miner was not receiving payments as a result of an award of benefits at the time of his death. Contrary to employer's assertion, as long as the miner is ultimately determined to be eligible to receive benefits, a survivor is entitled to payment of benefits. 30 U.S.C. §§901(a), 932(l); see 20 C.F.R. §725.212(a)(3)(ii); *Pothering v. Parkson Coal Co.*, 861 F.2d 1321, 1328, 12 BLR 2-60, 2-70 (3d Cir. 1988); *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989). Consequently, we affirm the award of benefits on the basis that claimant is derivatively entitled to survivor's benefits under amended Section 932(l).

² The miner's last coal mine employment was in Kentucky. Director's Exhibit 4. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

Accordingly, the administrative law judge's Order awarding benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge