

BRB No. 10-0194 BLA

BARBARA J. ADAMS)
(Widow of GENE L. ADAMS))
)
 Claimant-Petitioner)
)
 v.)
)
 HAROLD M. FELTY, INCORPORATED)
)
 and)
) DATE ISSUED: 11/10/2010
 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 Denying Benefits of Janice K. Bullard,
Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Daniel A. Miscavige (Gillespie, Miscavige, Ferdinand & Baranko),
Hazleton, Pennsylvania, for employer/carrier.

Sarah M. Hurley (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, HALL and
BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2009-BLA-05387) of Administrative Law Judge Janice K. Bullard on a survivor's claim, filed on May 8, 2008,¹ 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). Adjudicating the claim under 20 C.F.R. Part 718, the administrative law judge credited the parties' stipulation that claimant established 32.8 years of coal mine employment and the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b). The administrative law judge found, however, that claimant failed to satisfy her burden to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). In response, employer urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), declined to file a substantive response unless specifically requested to do so by the Board.

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).

On March 23, 2010, amendments to the Black Lung Benefits Act, affecting claims filed after January 1, 2005, 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

¹ Claimant is the widow of the deceased miner, Gene L. Adams. Director's Exhibit 3. During his lifetime, the miner filed a claim for benefits on July 6, 1987, which were awarded by Administrative Law Judge Robert D. Kaplan on May 15, 1989. Director's Exhibit 1. Employer took no action with regard to the award. The miner was receiving benefits at the time of his death on March 13, 2008. Director's Exhibits 1, 2, 14, 15, 24.

² This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as claimant's coal mine employment was in Pennsylvania. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibits 1, 3.

benefits without the burden of reestablishing entitlement. 30 U.S.C. §932(l).

By Order dated September 17, 2010, the Board provided the parties with the opportunity to submit supplemental briefing in this case to address the new amendments. In response to the Board's Order, claimant and the Director argue that amended Section 422(l) is applicable to this survivor's claim. Specifically, claimant and the Director contend that, because the survivor's 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 at the time of his death, claimant is derivatively entitled to survivor's benefits under the new amendments. Employer responds, stating that the amendments do not affect the administrative law judge's decision denying survivor's benefits, as the evidence is insufficient to establish that the miner's death was due to pneumoconiosis.

Under the facts and arguments presented, claimant is derivatively entitled to receive 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 she filed her claim after January 1, 2005, the claim was pending on March 23, 2010, and the miner was receiving benefits under a final award at the time of his death.³ Director's Exhibits 1, 4, 28. We need not address, therefore, the merits of claimant's appeal of the administrative law judge's findings pursuant to Section 718.205(c).

³ In Form CM-1025 and at the hearing, employer conceded that claimant is an eligible survivor of the miner. Director's Exhibit 31; Hearing Transcript at 8-14.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated, 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

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge