

BRB No. 13-0294 BLA

ALICE L. HOOD)
(Widow of MARTIN H. HOOD))
)
 Claimant-Respondent)
)
 v.)
)
 NAVARO MINING, INCORPORATED)
)
 and)
)
 WEST VIRGINIA COAL WORKERS') DATE ISSUED: 01/10/2014
 PNEUMOCONIOSIS FUND)
)
 Employer/Carrier-)
 Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Order Awarding Survivor's Benefits of William S. Colwell,
Administrative Law Judge, United States Department of Labor.

Amy Jo Holley (Jackson Kelly PLLC), Morgantown, West Virginia, for
employer/carrier.

Helen H. Cox (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: McGRANERY, HALL, and BOGGS, Administrative Appeals
Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Order Awarding Survivor's Benefits (2013-BLA-5100) of Administrative Law Judge William S. Colwell, rendered on a subsequent survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act).

Claimant¹ filed her initial claim for survivor's benefits on May 18, 2004. Director's Exhibit 4. The district director denied benefits on May 11, 2005, finding that the evidence did not establish that the miner's death was due to pneumoconiosis. *Id.* Claimant did not pursue the claim further.

Claimant filed this subsequent claim on June 29, 2012. Director's Exhibit 6. The administrative law judge found claimant to be automatically entitled to receive benefits under amended Section 932(*l*) of the Act, 30 U.S.C. §932(*l*),² and awarded survivor's benefits commencing as of June 2005, the month after claimant's initial survivor's claim was denied. Order at 2-3.

On appeal, employer argues that the denial of claimant's initial claim for survivor's benefits is *res judicata*, and precludes an award of survivor's benefits in this subsequent claim.³ Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), urges affirmance of the award of benefits.

¹ Claimant is the widow of the miner, who died on April 11, 2004. Director's Exhibit 8. At the time of his death, the miner was receiving federal black lung benefits pursuant to a final award on his lifetime claim. Director's Exhibit 1.

² Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005 that were pending on or after March 23, 2010. Relevant to this case, Congress revived 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. 30 U.S.C. §932(*l*), amended by Pub. L. No. 111-148, §1556(b), 124 Stat. 119, 260 (2010).

³ Employer does not challenge the administrative law judge's findings that claimant established each fact necessary to demonstrate her entitlement under amended Section 932(*l*): that she filed her claim after January 1, 2005; that she is an eligible survivor of the miner; that her claim was pending on or after March 23, 2010; and that the miner was determined to be eligible to receive benefits at the time of his death. Therefore, those findings are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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.⁴ 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).

Relying on the arguments raised before the United States Court of Appeals for the Fourth Circuit by the employer in *Union Carbide Corp. v. Richards*, 721 F.3d 307 (4th Cir. 2013), employer argues that the recent amendments to the Act do not void the res judicata effect of the denial of benefits in claimant's prior survivor's claim. Employer's Brief at 5. The Fourth Circuit rejected those arguments in *Richards*, holding that the amendments to the Act created a new cause of action, and that res judicata therefore does not bar an award of benefits pursuant to Section 932(l) in subsequent survivor's claims. *Richards*, 721 F.3d at 313-17. We reject employer's arguments for the reasons set forth by the Fourth Circuit in *Richards*.

Because claimant filed her subsequent survivor's claim after January 1, 2005, her claim was pending after March 23, 2010, and the miner was receiving benefits under a final award at the time of his death, we affirm the administrative law judge's determination that claimant is entitled to receive survivor's benefits pursuant to amended Section 932(l) of the Act.

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

Accordingly, the administrative law judge's Order Awarding Survivor's Benefits is affirmed.

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge