

BRB No. 09-0644 BLA

SELMA TOLLIVER)
(Widow of AMOS TOLLIVER))
)
 Claimant-Petitioner)
)
 v.)
)
 P-G & H, INCORPORATED)
)
 and)
)
 WEST VIRGINIA COAL WORKERS') DATE ISSUED: 06/30/2010
 PNEUMOCONIOSIS 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 Thomas M. Burke,
Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Juliet Walker Rundle & Associates), Pineville, West
Virginia, for claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, 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, SMITH and
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (2007-BLA-6032) of Administrative Law Judge Thomas M. Burke rendered on a survivor’s claim¹ 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). Adjudicating the claim under 20 C.F.R. Part 718, the administrative law judge credited the miner with forty years of coal mine employment, based on the parties’ stipulation. Hearing Transcript at 7. The administrative law judge noted that the miner was receiving benefits at the time of his death, based on an award that became final in 1999. The administrative law judge, however, found that the medical evidence was insufficient to establish that pneumoconiosis hastened the miner’s death and, therefore, failed to establish that pneumoconiosis substantially contributed to the miner’s death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied survivor’s 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 to claimant’s appeal.

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 provides that an eligible survivor of a miner who was receiving 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).

By Order dated March 30, 2010, the Board permitted the parties to submit supplemental briefing in this case to address the new amendments. *Tolliver v. P-G & H, Inc.*, BRB No. 09-0644 BLA (Mar. 30, 2010)(unpub. Order). The Director responds, stating that the recent amendment to Section 422(l) of the Act, 30 U.S.C. §932(l), mandates an award of benefits, regardless of whether claimant was able to prove that pneumoconiosis hastened the miner’s death. The Director accepts liability for the Black Lung Disability Trust Fund for the payment of survivor’s benefits and requests that employer be dismissed as the responsible operator. Claimant responds, concurring with the Director that the recent amendment to Section 422(l) of the Act mandates an award of benefits in her survivor’s claim. As an initial matter, we grant Director’s request and dismiss employer as the responsible operator. Further, in light of the recent amendments

¹ Claimant is the widow of the miner, who died on September 27, 2006. Director’s Exhibit 4. Claimant filed her survivor’s claim on October 18, 2006. *Id.*

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 at the time of his death.² We need not consider, therefore, claimant's allegations of error, as set forth in her Petition for Review and brief, regarding the administrative law judge's findings under 20 C.F.R. §718.205(c).

Accordingly, we reverse the administrative law judge's Decision and Order – Denying Benefits and remand this case to the district director for an entry of an appropriate order regarding the payment of survivor's benefits by the Black Lung Disability Trust Fund.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

² At the hearing, the parties stipulated that claimant was an eligible survivor of the miner. Hearing Transcript at 6-7.