

BRB No. 09-0594 BLA

CLAUDETTE McBRYDE )  
(Widow of ROBERT McBRYDE) )  
 )  
 Claimant-Respondent )  
 )  
 v. )  
 )  
 ANGUS MINING COMPANY ) DATE ISSUED: 05/27/2010  
 )  
 Employer-Petitioner )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

John Cline, Piney View, West Virginia, for claimant.

Wendy G. Adkins and William S. Mattingly (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Jeffrey S. Goldberg (M. Patricia Smith, Solicitor of Labor; Rae Ellen Frank 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:

Employer appeals the Decision and Order Awarding Benefits (2008-BLA-5444) of Administrative Law Judge Linda S. Chapman rendered on a survivor's 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). The administrative law judge credited the miner with twenty-eight years of qualifying coal mine employment, and determined that claimant was an eligible survivor under the Act and that the doctrine of collateral estoppel was applicable under the facts of this case to preclude employer from relitigating the issue of the existence of pneumoconiosis.<sup>1</sup> Adjudicating this claim, filed on June 14, 2007, pursuant to the regulatory provisions at 20 C.F.R. Part 718, the administrative law judge found that claimant was entitled to the irrebuttable presumption of death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(3), based on her finding that the evidence of record was sufficient to establish the existence of complicated pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304. Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in concluding that employer was collaterally estopped from litigating the issue of the existence of pneumoconiosis in this survivor's claim. Employer further challenges the administrative law judge's weighing of the evidence relative to the issue of complicated pneumoconiosis at Section 718.304, arguing that the administrative law judge improperly shifted the burden of proof and selectively analyzed the medical opinion evidence. Claimant responds, urging affirmance of the award of benefits, to which employer has replied in support of its position. The Director, Office of Workers' Compensation Programs (the Director), initially declined to file a substantive response to employer's appeal. However, pursuant to the Board's Order, issued on March 30, 2010, permitting supplemental briefing in this case, the Director now states that the recent amendment to Section 422(l) of the Act, 30 U.S.C. §932(l),<sup>2</sup> mandates an award of benefits, regardless of whether the administrative law judge's decision is supported by substantial evidence. Claimant has also filed a supplemental brief, agreeing with the Director's position.<sup>3</sup>

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<sup>1</sup> The miner was awarded lifetime benefits in an Award of Benefits issued by the district director on November 18, 1986. Following the miner's death on June 4, 2007, claimant, the miner's widow, filed her survivor's claim on June 14, 2007. Director's Exhibit 10.

<sup>2</sup> Under Section 422(l) of the Act, as amended, a qualified survivor of a miner who filed a successful claim for benefits is automatically entitled to survivor's benefits without the burden of reestablishing entitlement.

<sup>3</sup> On April 28, 2010, employer filed a motion for an extension of time in which to file a supplemental brief. In view of our disposition of this case, as set forth *infra*, employer's motion is denied.

In light of the recent amendments to the Act, which became effective on March 23, 2010, we hold 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. Consequently, we need not consider employer's arguments on appeal, as there is no longer an issue of material fact regarding the elements of claimant's entitlement.

Accordingly, we affirm the administrative law judge's finding that claimant is entitled to benefits.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge