

BRB No. 09-0600 BLA

KATHLEEN D. SIMPKINS)
(Widow of LAWRENCE SIMPKINS))
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED: 05/25/2010
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Richard A. Morgan,
Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Rita Roppolo (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, McGRANERY
and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Benefits (07-BLA-5290) of
Administrative Law Judge Richard A. Morgan 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

¹ Claimant is the widow of the miner, who died on January 18, 2006. Director's
Exhibit 11. Claimant filed her claim for survivor's benefits on January 31, 2006.
Director's Exhibit 2. 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.

U.S.C. §§921(c)(4) and 932(l) (the Act). The administrative law judge credited the miner with at least twelve years of coal mine employment, based on the parties' stipulation. The administrative law judge found that claimant established that the miner had pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b). The administrative law judge further found that claimant did not 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 his analysis of the medical opinions when he found that the miner's death was not due to pneumoconiosis. The Director, Office of Workers' Compensation Programs (the Director) responds, agreeing with claimant that the administrative law judge erred in his analysis and weighing of the medical opinion evidence regarding the cause of the miner's death.

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. 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 the miner's death was due to pneumoconiosis. Claimant responds, concurring with the Director that the recent amendment to Section 422(l) of the Act mandates an award of benefits.

In light of the recent amendments 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. 111-48, §1156(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 Therefore, we reverse the administrative law judge's finding that claimant is not entitled to benefits.

² The administrative law judge found, and it is undisputed that, claimant is an eligible survivor of the miner. Decision and Order at 2.

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

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge