

BRB No. 09-0624 BLA

PATRICIA E. HUNZIE)
(Widow of HARRY S. HUNZIE))
)
 Claimant-Respondent)
)
 v.)
)
 KEMMERER COAL COMPANY c/o) DATE ISSUED: 05/20/2010
 PITTSBURG & MIDWAY COMPANY)
)
 and)
)
 ST. PAUL TRAVELERS INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Petitioners)
)
 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 William S. Colwell, Associate Chief Administrative Law Judge, United States Department of Labor.

Jonathan Wilderman (Wilderman & Linnet, P.C.), Denver, Colorado, for claimant.

Scott M. Busser (Moseley, Busser & Appleton, P.C.), Denver, Colorado, for employer/carrier.

Rita A. 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, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (2007-BLA-05178) of Associate Chief Administrative Law Judge William S. Colwell with respect to 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 thirty-four years of coal mine employment, based on the parties’ stipulation. In addition, 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;² therefore, employer was precluded from relitigating the findings from the miner’s claim establishing the existence of pneumoconiosis, and that the miner’s pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), based on the applicability of the doctrine of collateral estoppel. The administrative law judge then found that the medical evidence was sufficient to establish that pneumoconiosis hastened the miner’s death and, therefore, was a substantially contributing cause of the miner’s death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded survivor’s benefits.

On appeal, employer contends that the administrative law judge erred in finding the evidence sufficient to establish that the miner’s death was due to pneumoconiosis pursuant to Section 718.205(c), arguing that the administrative law erred in weighing the conflicting evidence of record. In response, claimant urges affirmance of the administrative law judge’s award of benefits, to which employer has replied in support of its position. The Director, Office of Workers’ Compensation Programs (the Director),

¹ Claimant is the widow of the miner, who died on November 21, 2005. Director’s Exhibit 8. Claimant filed her survivor’s claim on December 23, 2005. Director’s Exhibit 5.

² The miner filed his third claim for benefits on August 26, 1998, which was awarded by the district director on April 20, 1999. Director’s Exhibit 3. Following its request for a formal hearing, employer withdrew its controversion of all issues in the claim and agreed to pay benefits to the miner in a letter dated October 7, 1999. *Id.* The miner was in pay status at the time of his death. Decision and Order at 2; Director’s Exhibit 3.

declined to file a substantive response to employer'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 holds that an eligible survivor of a miner who filed a successful claim for benefits is automatically entitled to survivor's benefits without the burden of reestablishing entitlement. 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. Employer responds, stating that the amendments do not affect the current appellate stance of this case. 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. 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.

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. 111-148, §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.³ We need not consider, therefore, employer's allegations of error, as set forth in both its original Petition for Review and brief and its Supplemental Brief Pursuant to March 30, 2010 Order, regarding the administrative law judge's findings under 20 C.F.R. §718.205(c).

³ At the hearing, the parties stipulated that clamant was an eligible survivor of the miner. Hearing Transcript at 8-9.

Accordingly, claimant is entitled to an award of benefits in this survivor's claim.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge