

BRB No. 09-0704 BLA

ANNA M. FARMER	)	
(Widow of FRANK L. FARMER)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PARAMONT COAL COMPANY	)	
	)	DATE ISSUED: 05/26/2010
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.

Joseph E. Wolfe (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Maia S. Fisher (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:

Employer appeals the Decision and Order Awarding Benefits (08-BLA-5227) of Administrative Law Judge Linda S. Chapman rendered on a survivor's claim<sup>1</sup> 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 fifteen years of coal mine employment, based on the miner's employment and earnings records. The administrative law judge found that claimant established that the miner had complicated pneumoconiosis and, therefore, found that claimant is entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Alternatively, the administrative law judge found that claimant established that pneumoconiosis hastened the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding complicated pneumoconiosis established under 20 C.F.R. §718.304, and that the miner's death was due to pneumoconiosis under 20 C.F.R. §718.205(c). Claimant did not file a brief in response to employer's appeal. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to affirm the administrative law judge's finding of complicated pneumoconiosis and to affirm the award of benefits. Employer filed a reply brief, reiterating its contention that the administrative law judge erred in finding complicated pneumoconiosis established.

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 April 8, 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 is able to prove that the miner had complicated pneumoconiosis, or that his death was due to pneumoconiosis. Claimant and employer respond, concurring with the Director that the

---

<sup>1</sup> Claimant is the widow of the miner, who died on February 24, 2007. Director's Exhibit 8. Claimant filed her claim for survivor's benefits on March 16, 2007. Director's Exhibit 3. 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.

recent amendment to Section 422(*l*) of the Act mandates an award of benefits. Employer, however, further notes that the recent amendments to the Act “ha[ve] been challenged in the United States District Courts of Florida and Virginia. . . .” Employer’s Supplemental Brief at 2. Employer therefore requests that this case be held in abeyance “until decisions are issued resolving the legal challenges to Pub. L. No. 111-148. . . .” *Id.* at 3.

In light of the recent amendments to the Act, we agree with the parties 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.<sup>2</sup> Employer, in its supplemental brief, notes that no court has yet enjoined the application, or ruled on the validity of, the recent amendments to the Act. Employer’s Supplemental Brief at 2. Employer’s request to hold this case in abeyance is denied, and we affirm the administrative law judge’s award of benefits on the basis that claimant is derivatively entitled to survivor’s benefits.

---

<sup>2</sup> 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 Awarding Benefits is affirmed.

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

REGINA C. McGRANERY  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge