

BRB Nos. 09-0520 BLA  
and 09-0615 BLA

TONDA NAPIER	)	
(o/b/o and Widow of SAM NAPIER)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY,	)	
INCORPORATED	)	DATE ISSUED: 11/09/2010
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER on RECONSIDERATION

Appeals of the Decision and Order on Remand of Janice K. Bullard, and the Decision and Order of Kenneth A. Krantz, Administrative Law Judges, United States Department of Labor.

John Hunt Morgan, Manchester, Kentucky, for claimant.

Helen H. Cox (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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant has filed a timely Motion for Reconsideration of the Board's Decision and Order of March 17, 2010, in the captioned case, which arises under 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). In that decision, the Board affirmed Administrative Law Judge Janice K. Bullard's finding that the medical opinion evidence in the miner's claim did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).<sup>1</sup> *Napier v. Shamrock Coal Co.*, BRB Nos. 09-0520 and 09-0615 BLA (Mar. 17, 2010) (unpub.). The Board, therefore, affirmed Judge Bullard's denial of benefits in the miner's claim. *Id.* In regard to the survivor's claim, the Board affirmed Administrative Law Judge Kenneth A. Krantz's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The Board, therefore, affirmed Judge Krantz's denial of benefits in the survivor's claim.

On reconsideration, claimant contends that "there is substantial evidence to support claimant's claims." Motion for Reconsideration at 1. Neither employer nor the Director, Office of Workers' Compensation Programs (the Director), filed a response to claimant's motion for reconsideration.

### **Impact of the Recent Amendments**

By Order dated August 3, 2010, the Board provided the parties with the opportunity to address the impact on this case, if any, of Section 1556 of Public Law No. 111-148, which amended the Act with respect to the entitlement criteria for certain claims. The Director has responded, and correctly states that the recent amendments to the Act, which became effective on March 23, 2010, and which apply to claims filed after January 1, 2005, do not apply to the miner's claim, because it was filed before January 1, 2005.<sup>2</sup>

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<sup>1</sup> The Board had previously affirmed Administrative Law Judge Paul H. Teitler's findings that the other evidence in the miner's claim did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3). *S.N. [Napier] v. Shamrock Coal Co.*, BRB No. 07-0439 BLA (Feb. 29, 2008) (unpub.).

<sup>2</sup> Apparently not having been served with claimant's April 14, 2010 Motion for Reconsideration, the Director, Office of Workers' Compensation Programs (the Director), takes the position that the Board's March 17, 2010 decision became final, and that therefore, the Board lacks "jurisdiction to consider the impact of these amendments on these claims." Director's Brief at 2. Because claimant filed a timely Motion for Reconsideration, this case remains pending before the Board. 20 C.F.R. §§802.406, 802.407(a). The Director includes a footnote in his response addressing what he believes the impact of Section 1556 would be, assuming that the claims were still pending before the Board. Director's Brief at 2 n.1.

However, the Director contends that Section 1556 affects the survivor's claim and that a remand is required. Specifically, because claimant filed her survivor's claim after January 1, 2005, and it was still pending on March 23, 2010, the Director states that the amended version of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), applies to the survivor's claim.<sup>3</sup> Claimant agrees that Section 1556 affects the survivor's claim, and that a remand is required.

### **The Miner's Claim**

Claimant's statements on reconsideration, regarding Judge Bullard's adjudication of the miner's claim, do not raise any substantive issue or identify any specific error on the part of Judge Bullard in determining that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). We, therefore, deny claimant's Motion for Reconsideration in regard to the miner's claim.

### **The Survivor's Claim**

After review of the parties' responses, we are persuaded that Judge Krantz's findings, and his denial of benefits in the survivor's claim, must be vacated. The Section 411(c)(4) presumption requires a determination of whether the miner was totally disabled due to a pulmonary or respiratory impairment, an issue that was not relevant to this survivor's claim before the recent amendments.<sup>4</sup> Consequently, we cannot affirm the denial of survivor's benefits on the basis that claimant did not establish the existence of pneumoconiosis. Thus, we grant claimant's Motion for Reconsideration in regard to the

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<sup>3</sup> Section 411(c)(4) provides that if a miner had at least fifteen years of qualifying coal mine employment, and if the evidence establishes the presence of a totally disabling respiratory impairment, there is a rebuttable presumption of total disability due to pneumoconiosis and/or that the miner's death was due to pneumoconiosis. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §921(c)(4)).

<sup>4</sup> Administrative Law Judge Kenneth A. Krantz credited the miner with at least eighteen years of coal mine employment. In affirming Administrative Law Judge Janice K. Bullard's denial of the miner's claim, the Board affirmed her finding that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), without addressing her additional finding that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b). *Napier v. Shamrock Coal Co.*, BRB Nos. 09-0520 and 09-0615 BLA (Mar. 17, 2010) (unpub.).

survivor's claim, vacate Judge Krantz's findings under 20 C.F.R. §718.202(a), and remand this case to him.

On remand, Judge Krantz must initially consider whether claimant is entitled to invocation of the rebuttable presumption at Section 411(c)(4). Because the presumption alters the required findings of fact and the allocation of the burden of proof, Judge Krantz must allow the parties the opportunity to submit additional, relevant evidence, consistent with the evidentiary limitations at 20 C.F.R. §725.414.

Accordingly, we affirm our Decision and Order of March 17, 2010, to the extent that it affirms Administrative Law Judge Janice K. Bullard's denial of the miner's claim. However, we modify our Decision and Order in regard to the survivor's claim. Administrative Law Judge Kenneth A. Krantz's Decision and Order denying survivor's benefits is vacated, and the case is remanded for further proceedings consistent with this opinion.

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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BETTY JEAN HALL  
Administrative Appeals Judge