

No. 12-2486

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

DOMINION COAL CORPORATION,

Petitioner

v.

VIRGINIA R. COMPTON

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION
PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

Respondents

On Petition for Review of an Order of the Benefits
Review Board, United States Department of Labor

BRIEF FOR THE FEDERAL RESPONDENT

M. PATRICIA SMITH
Solicitor of Labor

RAE ELLEN JAMES
Associate Solicitor

GARY K. STEARMAN
Counsel for Appellate Litigation

BARRY H. JOYNER
Attorney, U.S. Department of Labor
Office of the Solicitor, Suite N-2119
200 Constitution Avenue, N.W.
Washington, D.C. 20210
(202) 693-5660
joyner.barry@dol.gov

Attorneys for the Director, Office
of Workers' Compensation Programs

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On Petition for Review of a Final Order of the Benefits
Review Board, United States Department of Labor

BRIEF FOR THE FEDERAL RESPONDENT

This appeal involves a claim for survivors' benefits under the Black Lung Benefits Act (BLBA), 30 U.S.C. §§ 901-44, as amended by Section 1556 of the Affordable Care Act (ACA), Pub. L. No. 111-148, § 1556 (2010), filed by Virginia R. Compton. Mrs. Compton is the widow of Johnny Compton, a former coal miner. A Department

of Labor (DOL) administrative law judge (ALJ) awarded her claim, and the Benefits Review Board affirmed. Dominion Coal Corporation, Mr. Compton's former employer, has petitioned the Court to review the Board's decision.¹ The Director, Office of Workers' Compensation Programs, responds in support of the award.

STATEMENT OF THE ISSUE

The only issue to be decided in this appeal is the entitlement date on Mrs. Compton's claim.² Survivors are generally entitled to benefits as of the date of a miner's death. On a subsequent claim, however, entitlement does not commence until the month after the

¹ Dominion does not contest that it is the party liable to pay benefits on Mrs. Compton's claim. See 20 C.F.R. § 725.495. The Black Lung Disability Trust Fund has paid Mrs. Compton's survivor's benefits on an interim basis. See 20 C.F.R. § 725.522(a). If the Court affirms her award, Dominion will have to reimburse the Trust Fund for the payments made, see 20 C.F.R. § 725.602, in addition to paying continuing benefits to her.

² Dominion properly acknowledges that *Union Carbide Corp. v. Richards*, 721 F.3d 307, 313-17 (4th Cir. 2013), is dispositive of its contention that Mrs. Compton's claim—a subsequent claim under 20 C.F.R. § 725.309(d)—is barred by principles of finality and res judicata. Pet. Br. at 8. In light of this concession, we will not address Dominion's finality argument beyond stating that *Union Carbide* was correctly decided.

denial of the prior claim became final. Here, the denial of Mrs. Compton's first claim became final in November 1999.

Did the Board correctly determine that Mrs. Compton was entitled to benefits on her subsequent claim commencing in December 1999?

STATEMENT OF THE FACTS

The issue presented in this case is both legal and procedural in nature. Thus, we will summarize the relevant regulatory provisions, as well as the procedural history of the case.

A. Legal Background

Under the ACA amendments to the BLBA amendments, an eligible survivor of a miner who received a lifetime benefit award is automatically entitled to continuing benefits if the survivor's claim—whether original or subsequent—meets the time limitations contained in ACA Section 1556(c).³ Pub. L. No. 111-148, § 1556(b), (c) (2010); *West Virginia CWP Fund v. Stacy*, 671 F3d 378, 388-89 (4th Cir. 2011), *cert. denied*, 133 S.Ct. 127 (2012); *Union Carbide*

³ Section 1556 applies to claims filed after January 1, 2005, which are pending on or after March 23, 2010. Pub. L. No. 111-148, § 1556(c) (2010).

Corp. v. Richards, 721 F.3d 307, 313-14 (4th Cir. 2013); accord *Marmon Coal v. Director, OWCP*, --- F.3d---, 2013 WL 4017160, **3-5 (3d Cir. Aug. 8, 2013). With one minor exception that is not relevant here,⁴ neither the BLBA generally, nor ACA Section 1556 in particular, identifies when entitlement on survivors' subsequent claims commences.

There must be a date when benefits commence, however. Thus, DOL's regulations prescribe the date on which a claimant's entitlement begins. Generally, a survivor is entitled to benefits beginning with the month the miner died. 20 C.F.R. § 725.503(c). This rule is subject to the proviso that "[i]n any case in which a subsequent claim is awarded, no benefits may be paid for any period prior to the date upon which the order denying the prior claim became final." 20 C.F.R. § 725.309(d)(5). Thus, the entitlement date on a survivor's subsequent claim under ACA Section 1556 is the month after the month the denial of the survivor's prior claim became final. *Union Carbide Corp.*, 721 F.3d

⁴ Benefits cannot commence before January 1974 for claims filed after December 31, 1973. 30 U.S.C. § 932(e)(2).

at 317, n. 5; accord *Skytop Contracting Co. v. Director, OWCP*, --- Fed. Appx. ---, 2013 WL 4106409, *2 (3d Cir. Aug. 15, 2013); see generally *McCoy Elkhorn Coal Corp. v. Dotson*, 714 F.3d 945, 946 (6th Cir. 2013) (DOL's pre-existing entitlement-date regulations apply to claims governed by ACA Section 1556).

B. Procedural History

Mr. Compton filed a claim for lifetime disability benefits in 1983. Director's Exhibit (DX) 1.⁵ An ALJ ultimately awarded his claim in 1989, and the Board affirmed the award in 1992. *Id.* Dominion did not appeal that decision, and the award became final.

Mr. Compton died in July 1994, less than two years after his award became final. *Id.* Mrs. Compton filed a claim for survivors' benefits in August 1994. *Id.* An ALJ denied the claim, and on September 14, 1999, the Board affirmed the denial on the ground that the miner's death was not due to pneumoconiosis. Joint Appendix (JA) at 24. Mrs. Compton took no further action on this claim. Thus, the Board's decision became final on November 15,

⁵ Exhibit numbers refer to the administrative record created when this case was before the ALJ.

1999, at the expiration of the sixty-day period for an appeal to this Court.⁶ 20 C.F.R. § 802.406; *see* 33 U.S.C. § 921(c), as incorporated by 30 U.S.C. § 932(a).

Following the ACA’s enactment, Mrs. Compton filed a subsequent claim. DX 3; *see* 20 C.F.R. § 725.309(d). A DOL district director awarded this claim (DX 15), and Dominion contested that determination. DX 16. An ALJ, however, also awarded Mrs. Compton’s claim, finding that Mrs. Compton satisfied all requirements for entitlement under ACA Section 1556. JA at 20; *see Union Carbide*, 721 F.3d at 313-14. With respect to the commencement date for benefits, the ALJ cited the provision of 20 C.F.R. § 725.309(d)(5), and concluded (without explanation) that Mrs. Compton was entitled to benefits as of October 1999—the month after the Board issued its decision on her prior claim. JA at 20.

⁶ November 13, 1999, the actual sixtieth day after September 14, was a Saturday. Monday, November 15, was the next business day. *See* Fed. R. App. P. 26(a)(1)(C) (in computing time, when the last day is a Saturday, “the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday”).

Dominion appealed to the Board, arguing both that Mrs. Compton's claim was precluded by, among other things, principles of finality and res judicata, and that she could not receive benefits prior to January 2005, Section 1556's claim-filing limitation date. The Director urged affirmance of the ALJ's award, but modification of the entitlement date to December 1999, the month after the denial of Mrs. Compton's first claim became final.

The Board affirmed the ALJ's award of benefits, but modified the entitlement date on her claim to December 1999. JA at 9, 12, 13; *see* 20 C.F.R. §§ 725.309(d)(5); 802.406. Dominion moved for reconsideration, 20 C.F.R. § 802.407, but the Board summarily denied the company's motion. JA at 7. Dominion then petitioned this Court for review. JA at 15.

SUMMARY OF THE ARGUMENT

The Court should affirm the Board's decision. *Union Carbide* makes clear that DOL's long-standing entitlement-date regulations apply to claims awarded under Section 1556, including survivors' subsequent claims. Moreover, nothing in the ACA indicates that Congress intended to displace those rules. Under those rules, Mrs. Compton is entitled to benefits as of December 1999—the month

after the denial of her prior claim became final. Dominion’s arguments against the uniform application of the pre-existing rules have no merit.

ARGUMENT

The entitlement date on a survivor’s subsequent claim under ACA Section 1556 is the month after the denial of her prior claim became final.

A. Standard of Review

This case presents a legal question—whether DOL’s entitlement-date regulations apply to survivors’ subsequent claims awarded under ACA Section 1556. “This Court exercises de novo review over questions of law” *Stacy*, 671 F.3d at 688 (citation omitted).

B. Discussion

The Court should affirm the Board’s determination that Mrs. Compton is entitled to benefits as of December 1999. A survivor is generally entitled to benefits under the BLBA as of the month a miner dies. 20 C.F.R. § 725.503(c); *Union Carbide*, 721 F.3d at 317, n. 5. But entitlement on a subsequent claim is more limited: entitlement does not commence until the month after the denial of the prior claim became final. 20 C.F.R. § 725.309(d)(5); *Union*

Carbide, 721 F.3d at 317, n. 5. These rules, promulgated nearly a decade before the ACA, were not changed by the ACA amendments to the BLBA, and continue to apply to cases governed by ACA Section 1556.⁷ *Union Carbide*, 721 F.3d at 317, n. 5; *McCoy Elkhorn*, 714 F.3d at 946; *Skytop Contracting Co.* --- Fed. Appx. ---, 2013 WL 4106409, *2. As this Court stated in *Union Carbide*,

[r]eading those provisions together the Board reasonably chose an accrual date that would provide successful subsequent claimants with meaningful benefits yet which, at the same time, would mitigate the burden to the operator and respect the validity of the earlier denial.

⁷ Congress is presumed to know the law when it legislates. *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990). This includes knowledge of existing regulations. *Rubin v. Islamic Republic of Iran*, 709 F.3d 49, 57 (1st Cir. 2013). And “it follows that, absent a clear manifestation of contrary intent, a newly-created or revised statute is presumed to be harmonious with existing law” *Johnson v. First Nat’l Bank of Montevideo, Minn.*, 719 F.2d 270, 277 (8th Cir. 1983). Congress knew of DOL’s existing entitlement-date rules when it enacted the ACA, and nothing in ACA Section 1556 evinces any intent to displace those rules. See *McCoy Elkhorn*, 714 F.3d at 946 (“Congress made no mention of when an award of survivor’s benefits should commence when it enacted [Section 1556]. That leaves us with the preexisting regulation, which is still in place and which *still governs survivor-benefits applications* like this one.”) (emphasis added); *Skytop Contracting Co.* --- Fed. Appx. ---, 2013 WL 4106409, *2 (“[Congress] did not alter or contradict the regulation concerning the commencement date of benefits, § 725.309(d)(5).”) (citation omitted).

721 F.3d at 317, n. 5; *see also Stacy*, 671 F.3d at 384 (Congress' limitation of benefits under ACA Section 1556 to claims filed after January 1, 2005, represents a "measured approach" and "works to the benefit of coal mine operators").

Applying those rules here, the Board properly awarded benefits as of December 1999. Mrs. Compton's first claim was denied by the Board in September 1999.⁸ That decision became final in November 1999, when the sixty-day period for Mrs. Compton to seek review by this Court expired. 20 C.F.R. § 802.406; *see* 33 U.S.C. § 921(c). She was thus entitled to benefits on her subsequent claim the following month, December 1999. 20 C.F.R. §§ 725.309(d)(5); .503(c); *Union Carbide*, 721 F.3d at 317, n. 5.

Dominion asserts that *Union Carbide's* endorsement of the application of the pre-existing entitlement-date rules to claims under Section 1556 was merely *dicta*. Pet. Br. at 9-10. Even if true, it is not the type of ill-considered *dicta* this Court is free to

⁸ The ALJ mistakenly found entitlement as of October 1999, the month after the issuance of the Board's decision. JA at 20. Under Section 725.309(d)(5), however, entitlement is triggered when the prior denial *became final*, not when it was issued.

ignore. *See Kappos v. Hyatt*, 132 S.Ct. 1690, 1699 (2012).

Regardless, Dominion's challenges to *Union Carbide's* endorsement of DOL's regulations are wholly without merit.

Dominion contends that because the pre-ACA version of the BLBA did not permit automatic entitlement for survivors and because the earliest claim-filing date for claims governed by ACA Section 1556 is January 2005, entitlement cannot predate that month. Pet. Br. at 11-12. The logic of Dominion's argument would appear to point to an entitlement date of March 2010, as the pre-ACA version of the BLBA actually remained in effect until that date. But attempting to limit the entitlement period to either date is nothing more than an improper "backdoor" attempt to further limit the retroactive application of Section 1556. *McCoy Elkhorn*, 714 F.3d at 945-46 (rejecting similar attempts to limit entitlement period on claims under Section 1556); *see generally Stacy*, 671 F.3d at 383 (affirming retroactive application of Section 1556); *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15-16 (1976) (affirming retroactive application of BLBA in general).

Indeed, Dominion's argument simply confuses Section 1556's provisions identifying what claims are covered (those filed after

January 1, 2005, and pending on or after March 23, 2010) with the entitlement date for an award of benefits resulting from such claims. As noted above, the ACA made no change in the existing entitlement-date rules. Thus, those rules continue to apply here.⁹ *Union Carbide*, 721 F.3d at 317, n. 5; *McCoy Elkhorn*, 714 F.3d at 946; *Skytop Contracting Co.* --- Fed. Appx. ---, 2013 WL 4106409, *2.

Finally, Dominion's semantic attack on the language of Section 725.309(d)(5) needs little response. Dominion argues that although the regulation provides that benefits on a subsequent claim cannot predate the month after the denial of the prior claim became final, it does not affirmatively designate a start date. Pet. Br. at 13. Section 725.309(d)(5) is simply a limitation on the standard entitlement-date rules, however, under which a survivor receives benefits beginning with the month of the miner's death.¹⁰

⁹ This also refutes Dominion's contention that Section 725.309(d)(5) cannot apply because it was promulgated to implement the pre-ACA version of the BLBA. Pet. Br. at 12-13.

¹⁰ And the interaction of these provisions plainly belies Dominion's contention (Pet. Br. at 10) that application of Section 725.309(d)(5) (cont'd . . .)

20 C.F.R. § 725.503(c). Section 725.309(d)(5) truncates this default entitlement period to preclude payments for the period covered by a denied prior claim. *See Union Carbide*, 721 F.3d at 317, n.5. In short, the Board correctly applied the pre-existing rules in awarding benefits to Mrs. Compton as of December 1999. And Dominion has shown no error in the Board’s determination.

(. . . cont’d)

does not “meaningfully mitigate” its compensation liability. Mr. Compton died in July 1994. His survivor would normally receive benefits as of that date. *See* 20 C.F.R. § 725.503(c). Under Section 725.309(d)(5), however, Mrs. Compton cannot receive benefits for any period before December 1999—over five years later.

CONCLUSION

The Director requests that the Court affirm the decision of the Board awarding Mrs. Compton benefits as of December 1999.

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

RAE ELLEN JAMES
Associate Solicitor

GARY K. STEARMAN
Counsel for Appellate Litigation

s/Barry H. Joyner
BARRY H. JOYNER
Attorney, U.S. Department of Labor
Office of the Solicitor
Frances Perkins Building
Suite N-2119
200 Constitution Ave, N.W.
Washington, D.C. 20210
(202) 693-5660
joyner.barry@dol.gov

Attorneys for the Director, Office
of Workers' Compensation Programs

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the page limitation of Fed. R. App. P. 32(a)(7)(A). This brief contains fourteen pages, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). I also certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word 2010 in fourteen-point Bookman Old Style font.

s/Barry H. Joyner
BARRY H. JOYNER
Attorney
U.S. Department of Labor

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2013, an electronic copy of this brief was served through the CM/ECF system, and paper copies were served by first-class mail, postage prepaid, on the following:

Ronald E. Gilbertson, Esq.
Husch Blackwell, LLP
750 17th Street, N.W.
Suite 900
Washington, D.C. 20006-4656
Ronald.Gilbertson@huschblackwellaw.com

Ryan C. Gilligan, Esq.
Wolfe, Williams, Rutherford & Reynolds
P.O. Box 625
Norton, Virginia 24273-0625
rgilligan@wwrrlawfirm.com

s/Barry H. Joyner
BARRY H. JOYNER
Attorney
U.S. Department of Labor