

BRB No. 11-0596 BLA

JULIANA SANCHEZ)
(Widow of TERRY SANCHEZ))
)
 Claimant-Petitioner)
)
 v.)
)
 CHEVRON MINING, INCORPORATED) DATE ISSUED: 12/14/2011
)
 and)
)
 BROADSPIRE/CRAWFORD -TPA)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

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

Michelle Gerdano (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:

Claimant¹ appeals the Decision and Order (09-BLA-5449) of Administrative Law Judge Richard K. Malamphy (the administrative law judge) awarding benefits on a miner's claim and denying benefits 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 U.S.C. §§921(c)(4) and 932(l)) (the Act). The administrative law judge credited the miner with at least thirty-two years of coal mine employment, as stipulated by the parties, and adjudicated both claims pursuant to the 20 C.F.R. Part 718 regulations. The administrative law judge found that the weight of the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c), but insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits in the miner's claim, and denied benefits in the survivor's claim.

Claimant appeals the denial of benefits in her survivor's claim, and has filed a Petition for Review and Brief and Motion for Summary Decision. Claimant maintains that the amendments to the Act contained in Section 1556 of the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-148 (2010), are applicable to her claim. Specifically, claimant notes that the amendments, in pertinent part, revive Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that the survivor of a miner who was eligible to receive 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). Claimant contends that there is no genuine issue as to any material fact concerning her entitlement, as she is an eligible survivor of the miner, and her claim satisfies the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l), *i.e.*, the claim was filed after January 1, 2005 and remains pending after March 23, 2010, the effective date of the amendments. Employer has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion for Expedited Review, asserting that claimant's appeal is clearly meritorious and that claimant is entitled to

¹ Claimant is the widow of the miner, who filed his initial claim for benefits on May 30, 2002. On August 20, 2002, the district director denied benefits due to the miner's abandonment of the claim. Director's Exhibit 1. On December 13, 2005, the miner filed the present claim for benefits, and on February 28, 2007, the case was transferred to the Office of Administrative Law Judges for the scheduling of a formal hearing. Director's Exhibits 3, 28, 34. The miner died on March 9, 2008, and claimant filed her survivor's claim for benefits on July 25, 2008. Director's Exhibits 40, 47. The survivor's claim was consolidated with the miner's claim for adjudication and decision by the administrative law judge.

benefits as a matter of law, based on the award to her deceased husband. As employer has not challenged the award of benefits in the miner's claim, the Director maintains that the administrative law judge's denial of benefits in the survivor's claim should be reversed.²

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In his Decision and Order, the administrative law judge acknowledged that the amendments contained in Section 1556 of the PPACA were applicable to both the miner's and survivor's claims. However, after awarding benefits in the miner's claim, the administrative law judge denied benefits in the survivor's claim, based on his finding that the miner's death was unrelated to pneumoconiosis pursuant to Section 718.205(c), without addressing whether claimant was derivatively entitled to benefits under amended Section 932(l). Because claimant filed her claim after January 1, 2005, the claim was pending on March 23, 2010, and the miner has been determined eligible to receive benefits at the time of his death, claimant is automatically entitled to benefits pursuant to amended Section 422(l) of the Act, 30 U.S.C. §932(l). See *Stacy v. Olga Coal Co.*, 24 BLR 1-207 (Dec. 22, 2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011); see also *B & G Constr. Co. v. Director, OWCP [Campbell]*, F.3d , 2011 WL 5068092 (3d Cir. 2011); *Keene v. Consolidation Coal Co.*, 645 F.3d 844, 24 BLR 2-385 (7th Cir. 2011). Consequently, we reverse the administrative law judge's denial of survivor's benefits.

² We affirm, as unchallenged on appeal, the administrative law judge's findings that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c), and affirm his award of benefits in the miner's claim. See *Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983).

Accordingly, the administrative law judge's Decision and Order awarding benefits in the miner's claim is affirmed, but his denial of benefits in the survivor's claim is reversed, and this case is remanded to the district director for the entry of an award of survivor's benefits.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge