

BRB No. 10-0335 BLA

ANNA L. BATEMAN)	
(Widow of THEODORE BATEMAN))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	DATE ISSUED: 02/23/2011
CORPORATION)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order – Denial of Survivor Benefits and Decision and Order on Reconsideration – Partial Approval of Reconsideration Request, and Denial of Survivor Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Timothy C. MacDonnell and Nicholas Paul Bianchi (Washington and Lee University, School of Law), Lexington, Virginia, for claimant.

Mark E. Solomons (Greenberg Traurig, LLP), Washington, D.C., for employer.

Michelle S. 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 – Denial of Survivor Benefits and Decision and Order on Reconsideration – Partial Approval of Reconsideration Request, and Denial of Survivor Benefits (2007-BLA-5909) of Administrative Law Judge Richard T. Stansell-Gamm (the administrative law judge) with respect to a survivor’s claim filed on September 14, 2006, 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).² Initially, the administrative law judge noted that the miner was receiving benefits at the time of his death pursuant to the May 19, 2005 award of benefits of Administrative Law Judge Stuart A. Levin.³ Adjudicating the survivor’s claim under 20 C.F.R. Part 718, the administrative law judge accepted the parties’ stipulations to at least thirty-four years of coal mine employment, that employer was the properly designated responsible operator and that claimant was an eligible survivor of the miner under the Act. Based on the application of the doctrine of offensive non-mutual collateral estoppel, the administrative law judge found the existence of pneumoconiosis arising out of the miner’s coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). Notwithstanding his finding of simple pneumoconiosis, the administrative law judge found that the probative medical evidence was insufficient to establish that pneumoconiosis, or its complications, caused, contributed to, or hastened the miner’s death pursuant to 20 C.F.R. §718.205(c). Moreover, the administrative law judge found that the x-ray evidence was insufficient to establish the existence of complicated pneumoconiosis and, therefore, found that claimant failed to establish invocation of the irrebuttable presumption that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Accordingly, the administrative law judge denied benefits.

Pursuant to claimant’s request, the administrative law judge granted reconsideration, in part, finding that reconsideration of the radiological interpretations under Section 718.304 was warranted, in light of the application of the doctrine of

¹ Claimant is the widow of the miner, who died on July 8, 2006. Director’s Exhibits 6, 7.

² This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the miner’s coal mine employment occurred in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director’s Exhibit 3.

³ In a Decision and Order issued on March 28, 2006, the Board affirmed Administrative Law Judge Stuart A. Levin’s award of benefits. *Bateman v. Eastern Associated Coal Corp.*, BRB No. 05-0711 BLA (Mar. 28, 2006)(unpub.).

collateral estoppel in establishing the existence of simple pneumoconiosis. However, on reconsideration, the administrative law judge found that the weight of the relevant evidence failed to establish complicated pneumoconiosis, and, thus, that the miner's death was due to complicated pneumoconiosis pursuant to Section 718.304. The administrative law judge further found that reconsideration of the medical opinion evidence pursuant to Section 718.205(c) was not warranted, reaffirming his finding that the opinions of Drs. Cohen and Tuteur were in equipoise and, therefore, insufficient to establish that pneumoconiosis, or its complications, caused, contributed to, or hastened the miner's death pursuant to Section 718.205. Accordingly, the administrative law judge reaffirmed his denial of benefits.

On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. The amendments, in pertinent part, revive Section 422(*l*) of the Act, 30 U.S.C. §932(*l*),⁴ 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, in her Petition for Review and brief filed on April 6, 2010, argues that she is derivatively entitled to survivor's benefits under Section 1556 of Pub. L. No. 111-148, as a matter of law. Claimant contends that because the miner was found entitled to benefits at the time of his death pursuant to a lifetime claim, and her survivor's claim was filed after January 1, 2005, and was pending on March 23, 2010, it is impacted by the amendments to Section 422(*l*) of Act, 30 U.S.C. §932(*l*). Specifically, claimant contends that, based on the award of benefits in the miner's claim, she is not required to "refile or otherwise revalidate the claim of such miner." Claimant's Brief at 8. Alternatively, claimant challenges the merits of the administrative law judge's denial of benefits, arguing that the administrative law judge erred in weighing the medical evidence of record. Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, and also erred in finding that the evidence is insufficient to establish that pneumoconiosis hastened the miner's death pursuant to 20 C.F.R. §718.205(c).

In response to claimant's appeal, employer filed a Motion to Remand, requesting that the Board remand the case to the district director in order to allow employer to

⁴ The 2010 amendments to the Act also reinstated Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides, in pertinent part, a rebuttable presumption that the miner's death was due to pneumoconiosis, if fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment, *see* 20 C.F.R. §718.204(b), are established.

respond to the changes in the law. Employer argues that this claim may be impacted by the amendments to Section 411(c)(4), 30 U.S.C. §921(c)(4) of the Act, but that it is not impacted by the amendments to the derivative entitlement provisions of Section 422(l), 30 U.S.C. §932(l). Specifically, employer contends that the amendments to Section 932(l) do not affect this case because the relevant filing date for determining applicability is that of the miner's claim, and not the survivor's claim. Employer, therefore, argues that because the miner filed his claim prior to January 1, 2005, claimant is not derivatively entitled to benefits. Employer's Motion to Remand at 2 n.1. Employer does not otherwise respond to claimant's appeal.⁵

The Director, Office of Workers' Compensation Programs (the Director), responds, agreeing with claimant and urging the Board to reverse the administrative law judge's denial of benefits. The Director contends that, under Section 1556 of Pub. L. No. 111-148, claimant is entitled to an award of benefits because claimant is the eligible survivor of the miner, who was receiving benefits at the time of his death. Director's Brief at 4. In addition, the Director states that claimant filed her survivor's claim after January 1, 2005, and that the claim was still pending on March 23, 2010. *Id.* Therefore, the Director contends that claimant is automatically entitled to survivor's benefits under amended Section 932(l).

The recent 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 "determined to be 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). Because claimant filed her survivor's claim after January 1, 2005, her claim was pending on March 23, 2010, and the miner was awarded benefits on his claim, we hold that Section 932(l) applies to this case. *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193 (2010)(pending on recon.); *Stacy v. Olga Coal Co.*,

⁵ By Order dated June 4, 2010, the Board denied employer's Motion to Remand, holding that the impact of the amendments to the Black Lung Benefits Act cannot be determined until the Board has had an opportunity to review the findings of Administrative Law Judge Richard T. Stansell-Gamm (the administrative law judge). *Bateman v. Eastern Associated Coal Corp.*, BRB No. 10-0335 BLA (June 4, 2010) (Order) (unpub.).

BLR , BRB No. 10-0113 BLA (Dec. 22, 2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011).

Moreover, we reject employer's argument that the date of the filing of the miner's claim is the operative date for determining whether Section 1556 of Pub. L. No. 111-148 applies to the survivor's claim. In *Stacy*, the Board held that the operative date for determining eligibility for survivor's benefits under amended Section 932(*l*) is the date that the survivor's claim was filed, not the date that the miner's claim was filed. The Board specifically held that, under amended Section 932(*l*), an eligible survivor who files a claim after January 1, 2005, that is pending on or after the March 23, 2010 effective date of the recent amendments to the Act, is entitled to benefits, based solely on the miner's lifetime award, without having to prove that the miner died due to pneumoconiosis. *Stacy*, BLR at , BRB No. 10-0113 BLA, slip op. at 7; *see* 30 U.S.C. §932(*l*). Consequently, we vacate the denial of benefits as claimant meets the requirements for derivative entitlement.

As claimant is derivatively entitled to benefits, we remand this case to the district director for the entry of an award of benefits pursuant to amended Section 422(*l*) of the Act, 30 U.S.C. §932(*l*).⁶

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

⁶ In light of our disposition of this case, we need not address the administrative law judge's findings regarding the merits of entitlement.