

BRB No. 10-0370 BLA

JANET G. COX (Widow of )  
OKEY R. COX) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 )  
SLAB FORK COAL COMPANY )  
 )  
and )  
 )  
WEST VIRGINIA COAL WORKERS' ) DATE ISSUED: 02/24/2011  
PNEUMOCONIOSIS FUND )  
 )  
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 Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Janet G. Cox, Sophia, West Virginia, *pro se*.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

Emily Goldberg-Kraft (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,<sup>1</sup> without the assistance of counsel, appeals the Decision and Order Denying Benefits (2007-BLA-05703) of Administrative Law Judge Pamela Lakes Wood on a survivor's claim filed on June 29, 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). Adjudicating the claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant established that the miner had thirty-two years of coal mine employment and that he had pneumoconiosis at 20 C.F.R. §718.202(a)(2) and (4). The administrative law judge found, however, that claimant failed to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant contends generally that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs (the Director), responds,<sup>2</sup> arguing that the administrative law judge's decision must be vacated and the case remanded for consideration under the 2010 amendments of the Act, namely Section 411(c)(4),<sup>3</sup> 30 U.S.C. §921(c)(4). Employer responds, arguing that Section 411(c)(4) does not apply to this case, as the record does not support a finding of a sufficient number of years of underground coal mine employment necessary to invoke the Section 411(c)(4) presumption. Employer also argues that retroactive application of the amendments in this case is unconstitutional because it deprives employer of due process

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<sup>1</sup> Claimant is the widow of a miner, who died on April 5, 2001. Director's Exhibit 10. The miner filed two claims in his lifetime, both of which were denied. Director's Exhibit 1. The miner's first claim, filed on July 8, 1994, was denied by Administrative Law Judge Mollie W. Neal on March 29, 1996, and affirmed by the Board. *Cox v. Slab Fork Coal Co.*, BRB No. 96-0094 BLA (Feb. 27, 1997)(unpub.). The miner's second claim, filed on February 22, 2000, was denied by the district director on August 23, 2000.

<sup>2</sup> We consider the Motion for Remand filed by the Director, Office of Workers' Compensation Programs (the Director), to be his response brief.

<sup>3</sup> 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. In pertinent part, the amendments reinstated Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides a rebuttable presumption that the miner died 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.

and constitutes a taking of private property. Employer contends, therefore, that this case should be held in abeyance until the constitutional issues are resolved. Additionally, employer argues that the administrative law judge properly found that death causation was not established at Section 718.205(c). Consequently, employer urges affirmance of the administrative law judge's decision denying benefits.

We agree with the Director that the 2010 amendments are applicable to this case, as the claim was filed after January 1, 2005, and was pending on March 23, 2010. As the Director asserts, therefore, the administrative law judge's decision denying benefits must be vacated and the case remanded to the administrative law judge to address entitlement at Section 411(c)(4).<sup>4</sup> 30 U.S.C. §921(c)(4).

On remand, the administrative law judge must determine whether claimant is entitled to invocation of the rebuttable presumption that the miner's death was due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). In order to invoke the presumption, the administrative law judge must determine whether the miner was totally disabled at 20 C.F.R. §718.204(b). Additionally, the administrative law judge must determine whether the miner worked at least fifteen years in an underground coal mine or in a surface coal mine in conditions substantially similar to those in an underground mine. *See Director, OWCP v. Midland Coal Co. [Leachman]*, 855 F.2d 509 (7th Cir. 1988). If the administrative law judge determines that the presumption is invoked, she must then consider whether employer has satisfied its burden to rebut the presumption. *See* 30 U.S.C. §921(c)(4). On remand, the administrative law judge must allow for the submission of evidence by the parties to address the change in law. *See Harlan Bell Coal Co. v. Lamar*, 904 F.2d 1042, 11047-50, 14 BLR 2-1, 2-7-11 (6th Cir. 1990); *Tackett v. Benefits Review Board*, 806 F.2d 640, 642, 10 BLR 2-93, 2-95 (6th Cir. 1986). Further, any additional evidence submitted must be consistent with the evidentiary limitations at 20 C.F.R. §725.414. If evidence exceeding those limitations is offered, it must be justified by a showing of good cause pursuant to 20 C.F.R. §725.456(b)(1).<sup>5</sup>

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<sup>4</sup> Because this case must be remanded for consideration under Section 411(c)(4), 30 U.S.C. §921(c)(4), we do not review the administrative law judge's findings at 20 C.F.R. §718.205(c).

<sup>5</sup> We deny employer's request to hold this case in abeyance. We also deny its arguments concerning the constitutionality of the new amendments.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated and the case is remanded to the administrative law judge 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