

BRB No. 09-0677 BLA

SHIRLEY A. BENAMATI )  
(Widow of BERNARD BENAMATI) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 ITEC )  
 )  
 and )  
 )  
 STATE WORKERS' INSURANCE FUND ) DATE ISSUED: 06/10/2010  
(PA) )  
 )  
 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 on Remand - Denying Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Cheryl Catherine Cowen, Waynesburg, Pennsylvania, for claimant.

Edward K. Dixon and Ryan M. Krescanko (Zimmer Kunz PLLC), Pittsburgh, Pennsylvania, for employer/carrier.

Helen H. Cox (M. Patricia Smith, Solicitor of Labor; Rae Ellen Frank 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, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order on Remand – Denying Benefits of Administrative Law Judge Daniel L. Leland (the administrative law judge) rendered 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). This case has been before the Board previously. The miner filed a claim for benefits on February 3, 2000. In a Decision and Order dated May 9, 2002, Administrative Law Judge Robert J. Lesnick credited the miner with forty-three years of coal mine employment and found, *inter alia*, that the miner, by a preponderance of the evidence, established that he was totally disabled due to pneumoconiosis arising out of coal mine employment. *See* 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; Director’s Exhibit 1. Accordingly, Judge Lesnick awarded benefits. *Id.* The miner received benefits until his death on August 1, 2005. Director’s Exhibit 12. Claimant filed her survivor’s claim on August 17, 2005. Director’s Exhibit 3.

In his original Decision and Order dated February 5, 2008, the administrative law judge adjudicated the survivor’s claim pursuant to the regulations contained in 20 C.F.R. Part 718 and found that the existence of simple pneumoconiosis arising out of coal mine employment was established pursuant to 20 C.F.R. §§718.202(a), 718.203(b), but further found that the evidence did not establish that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, in *B.S. [Benamati] v. ITEC*, BRB No. 08-0404 BLA (Jan. 27, 2009) (unpub.), the Board vacated the denial of benefits and remanded the case for the administrative law judge to reconsider the admissibility of the medical evidence pursuant to the evidentiary limitations set forth in 20 C.F.R. §725.414, and to reconsider the evidence pursuant to 20 C.F.R. §718.205(c).

On remand, the administrative law judge concluded that the evidence failed to establish that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence failed to establish death due to pneumoconiosis pursuant to 20 C.F.R.

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<sup>1</sup> Claimant, Shirley A. Benamati, is the widow of the deceased miner, Bernard Benamati.

§718.205(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a letter stating that he would not file a substantive brief unless requested to do so by the Board.

On March 23, 2010, amendments to the Black Lung Benefits Act, affecting claims filed after January 1, 2005, were enacted. The 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 receiving 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).

By Order dated April 8, 2010, the Board permitted the parties to submit supplemental briefing in this case to address the new amendments. *Benamati v. ITEC*, BRB No. 09-0677 BLA (Apr. 8, 2010) (unpub. Order). Claimant and the Director respond, asserting that the recent amendment to Section 422(l) of the Act, 30 U.S.C. §932(l), mandates an award of benefits. Employer, however, argues that it has "effectively rebutted the presumption of death" due to pneumoconiosis and that an award of survivor's benefits is precluded. Employer's Second Supplemental Response Brief at 6.

In light of the recent amendments to the Act, we agree with the Director and claimant that claimant is derivatively entitled to survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l), *amended by* Pub. L. No. 111-148, §1556(b) (2010), as her claim was filed after January 1, 2005; the claim was pending on March 23, 2010; and the miner was receiving benefits under a final award at the time of his death.<sup>2</sup> Therefore, we reverse the administrative law judge's finding that claimant is not entitled to benefits. We need not consider employer's specific arguments on appeal, as there is no longer an issue of material fact regarding the elements of claimant's entitlement in this claim.

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<sup>2</sup> The administrative law judge acknowledged, and it is undisputed that, claimant is an eligible survivor of the miner. *See* 2008 Decision and Order at 2, 4; Director's Exhibit 41.

Accordingly, the administrative law judge's Decision and Order on Remand - Denying Benefits is reversed, and this case is remanded to the district director for the entry of an appropriate order.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge