

BRB Nos. 09-0564 BLA
and 09-0565 BLA

DIANA C. ALSBROOKS)	
(Widow and o/b/o JERRY ALSBROOKS,)	
SR.))	
)	
Claimant-Respondent)	
)	
v.)	
)	DATE ISSUED: 09/30/2010
ISLAND CREEK COAL COMPANY)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	DECISION and ORDER on
)	MOTION for
Party-in-Interest)	RECONSIDERATION

Appeal of the Decision and Order Award of Benefits in Living Miner's Claim and Award of Benefits in Survivor's Claim of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Brent Yonts, PSC), Greenville, Kentucky, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer has filed a timely Motion for Reconsideration, requesting that the Board reconsider its September 29, 2010 Decision and Order in the referenced case. In *Alsbrooks v. Island Creek Coal Co.*, BRB Nos. 09-0564 BLA and 09-0565 BLA (Sept. 29, 2010)(unpub.), the Board affirmed the administrative law judge's weighing of the medical evidence in the miner's claim and the award of

benefits. Concerning the survivor's claim, the Board held that claimant was derivatively entitled to benefits, due to the recent amendments to the Act, which revived Section 422(l), 30 U.S.C. §932(l).

On reconsideration, employer argues that claimant is not automatically entitled to survivor's benefits, based on the recent amendment to Section 422(l) of the Act, 30 U.S.C. §932(l), because, under the plain language of Section 422(l), *amended* by Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010), the operative date for determining eligibility for survivor's benefits is the date the miner's claim was filed, not the date the survivor's claim was filed. Employer contends that, because the miner filed his claim before January 1, 2005, the amendments to Section 422(l) do not apply to claimant's survivor's claim. Claimant responds, urging the Board to deny employer's motion. Additionally, claimant's counsel has filed a fee petition for services rendered before the Board.

The operative date for determining eligibility for survivor's benefits under amended Section 422(l) is the date that the survivor's claim was filed, not the date that the miner's claim was filed. *See Stacy v. Olga Coal Co.*, 24 BLR 1- , BRB No. 10-0113 BLA (Dec. 22, 2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan 6, 2011). Further, under amended Section 422(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 amendments, is entitled to benefits based solely on the miner's lifetime award, without having to prove that the miner died due to pneumoconiosis. *Stacy*, slip op. at 7; *see* 30 U.S.C. §932(l).

Thus, because claimant filed her claim after January 1, 2005, the claim was pending on March 23, 2010, and there was a final adjudication in the miner's claim that the miner was totally disabled due to pneumoconiosis at the time of his death, claimant is derivatively entitled to survivor's benefits pursuant to Section 422(l). *Mathews v. United Pocahontas Coal Co.*, 24 BLR at 1-193 (2010)(pending on recon.); *Stacy*, slip op. at 7. Accordingly, we grant employer's Motion for Reconsideration, but the relief requested is hereby denied. 30 U.S.C. §921(b)(5); 20 C.F.R. §§801.301(b), 802.407(a), 802.409.

On October 15, 2010, claimant's counsel filed a complete, itemized statement, requesting a fee for services performed from April 16, 2009, through October 4, 2010, in this appeal pursuant to 20 C.F.R. §802.203. Counsel requests a fee of \$847.50 for 5.65 hours of legal services at an hourly rate of \$150.00. No objections to the fee petition have been received. Upon review of the fee petition, the Board finds the requested fee to be reasonable in light of the services

performed and approves a fee of \$847.50, to be paid directly to claimant's counsel by employer. 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §802.203.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge