

BRB No. 10-0413 BLA

BARBARA DANIEL)
(Widow of JAMES DANIEL))
)
 Claimant-Petitioner)
)
 v.)
)
 PRICE COAL COMPANY,)
 INCORPORATED)
)
 and)
)
 AMERICAN BUSINESS & PERSONAL) DATE ISSUED: 03/17/2011
 INSURANCE MUTUAL, INCORPORATED)
)
 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 of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Helen H. Cox (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 on Remand (03-BLA-6615) of Administrative Law Judge Janice K. Bullard denying benefits on a 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, involving a survivor's claim filed on August 3, 2001, is before the Board for the third time.

In the Board's previous decision, pursuant to employer's appeal, the Board vacated the administrative law judge's findings that legal pneumoconiosis was established, and that the miner's death was due to legal pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(4), 718.205(c).² *B.D. [Daniel] v. Price Coal Co.*, BRB Nos. 08-0779 BLA and 08-0779 BLA-A, slip op. at 6-7 (Sept. 17, 2009) (unpub.) The Board specifically directed the administrative law judge, on remand, to reconsider whether the medical opinion evidence established legal pneumoconiosis, before addressing whether the evidence established that the miner's death was due to pneumoconiosis. *Id.* at 6.

On remand, the administrative law judge reweighed the medical opinion evidence, and found that it established that the miner suffered from legal pneumoconiosis, in the form of chronic obstructive pulmonary disease and chronic bronchitis due to coal mine dust exposure, under 20 C.F.R. §718.202(a)(4). However, the administrative law judge found that the medical 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, claimant asserts that the March 23, 2010 amendments to the Act apply to this case,³ and that she is, therefore, derivatively entitled to survivor's benefits,

¹ Claimant is the surviving spouse of the deceased miner, who died on July 29, 2001. Director's Exhibit 7. At the time of his death, the miner was receiving federal black lung benefits pursuant to a final award on his lifetime claim.

² The Board previously set forth this claim's full procedural history. *B.D. [Daniel] v. Price Coal Co.*, BRB Nos. 08-0779 BLA and 08-0779 BLA-A (Sept. 17, 2009) (unpub.); *Daniel v. Price Coal Co.*, BRB Nos. 06-0495 BLA and 06-0495 BLA-S (May 31, 2007) (unpub.).

³ 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), which provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of

because the miner was receiving benefits at the time of his death. The Director, Office of Workers' Compensation Programs (the Director), responds, asserting that this claim does not fall within the class of survivors' claims affected by the amendments, because it was filed before January 1, 2005. As claimant does not otherwise challenge the administrative law judge's findings on the merits, the Director urges the Board to affirm the administrative law judge's denial of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359, 363 (1965).

Section 1556(c) of Public Law No. 111-148 specifies the class of claims to which amended Section 422(l) applies. It provides that "[t]he amendments made by this section shall apply with respect to claims filed under part B or C of the Black Lung Benefits Act . . . after January 1, 2005, that are pending on or after the date of enactment of this Act." Pub. Law No. 111-148, §1556(c). Public Law No. 111-148 was enacted on March 23, 2010. *Id.*

Although claimant's survivor's claim was pending on March 23, 2010, the record reflects that she filed her survivor's claim on August 3, 2001. Director's Exhibit 2. Because claimant's claim was filed before January 1, 2005, it does not fall within the class of survivors' claims affected by the recent amendments. Consequently, we deny claimant's request for a summary decision that she is entitled to derivative entitlement based on amended Section 422(l).

Because claimant has not raised any contention of error regarding the administrative law judge's finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), this finding is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). We, therefore, affirm the administrative law judge's denial of benefits. *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

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).

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge