

BRB No. 13-0487 BLA

BARBARA J. RIGGLEMAN)	
(Widow of ARDEN K. RIGGLEMAN))	
)	
Claimant-Respondent)	
)	
v.)	
)	
BENTLEY COAL COMPANY)	DATE ISSUED: 05/23/2014
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

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

Barry H. Joyner (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: HALL, Acting Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2013-BLA-5697) of Administrative Law Judge Richard A. Morgan (the administrative

law judge), rendered on a subsequent survivor's claim¹ filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)(the Act).

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. *See* Section 1556 of the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-148 (2010). The amendments, in pertinent part, revive Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), 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 filed a subsequent survivor's claim on February 13, 2013. Director's Exhibit 5. On February 19, 2013, the district director issued a Proposed Decision and Order, wherein he found that claimant was derivatively entitled to benefits pursuant to amended Section 932(*l*). Director's Exhibit 10. At employer's request, the case was forwarded to the Office of Administrative Law Judges for a formal hearing. Director's Exhibit 11.

On May 14, 2013, the Director, Office of Workers' Compensation Programs (the Director), filed a motion for summary decision, asserting that, under amended Section 932(*l*), and given the filing date of her claim, claimant was entitled to benefits based on the prior award to her deceased husband.² Employer responded, acknowledging that the Board's decision in *Richards v. Union Carbide Corp.*, 25 BLR 1-31 (2012) (en banc) (McGranery, J., concurring and dissenting)(Boggs, J., dissenting) was relevant to the outcome of this case, and was pending on appeal to the United States Court of Appeals of the Fourth Circuit. Employer, therefore, requested that this case be held in abeyance pending issuance of a decision in *Richards*. Claimant did not respond to the Director's motion.

¹ Claimant is the widow of the miner, who died on January 9, 2002. Director's Exhibit 8. Claimant filed her initial claim for survivor's benefits on January 30, 2002, which was finally denied on August 27, 2003 by the district director. Director's Exhibit 3. Claimant's second application for benefits was filed on August 10, 2006 and denied on January 22, 2007 by the district director. Director's Exhibit 4.

² The miner was receiving federal black lung benefits at the time of his death pursuant to a claim filed on March 30, 1995, which was awarded by Administrative Law Judge Daniel L. Leland on September 2, 1998, and affirmed by the Board on September 24, 1999. Director's Exhibit 2; *Riggleman v. Bentley Coal Co.*, BRB No. 98-1642 BLA (Sept. 24, 1999)(unpub.).

In his Decision and Order Awarding Benefits, the administrative law judge found that, pursuant to amended Section 932(l), derivative benefits are available to an eligible survivor of a miner who was eligible to receive lifetime benefits at the time of his death, if the claim was filed after January 1, 2005 and was pending on or after March 23, 2010. Finding that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l), the administrative law judge denied employer's motion to hold the case in abeyance, and awarded survivor's benefits, commencing as of March 2007.

On appeal, employer contends that the doctrine of res judicata bars an award of benefits under the automatic entitlement provisions of amended Section 932(l) in this subsequent survivor's claim, where claimant's previously filed claims were denied. Employer requests that this case be held in abeyance pending issuance of the mandate in *Richards* by the United States Court of Appeals for the Fourth Circuit.³ The Director responds, urging the Board to affirm the administrative law judge's award of benefits. Claimant has not filed a brief in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In its brief, employer acknowledges that the Fourth Circuit recently affirmed the award of automatic derivative survivor's benefits in *Richards*, holding that amended Section 932(l) applies to all claims that comply with the time limitations set forth in Section 1556 of the PPACA, including subsequent survivor's claims. The court explained that the doctrine of res judicata does not bar a subsequent survivor's claim, since Section 1556 created a new cause of action not available to a survivor at the time of

³ The United States Court of Appeals for the Fourth Circuit consolidated *Peabody Coal Co. v. Director, OWCP [Morgan]*, 721 F.3d 307, BLR (4th Cir. 2013) with *Union Carbide Corp. v. Richards*, 721 F.3d 307, BLR (4th Cir. 2013). Employer's request, that further proceedings or actions related to this claim be held in abeyance pending a decision from the Fourth Circuit on a petition for rehearing in *Morgan*, is moot, as the rehearing request was denied on September 3, 2013, and no petition for certiorari was filed.

⁴ The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as the miner's last coal mine employment was in West Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibit 1.

filing of the initial claim, and entitlement under amended Section 932(l) does not require relitigation of a prior finding that the miner's death was not due to pneumoconiosis. *Union Carbide Corp. v. Richards*, 721 F.3d 307, BLR (4th Cir. 2013); *see Consolidation Coal Co. v. Maynes*, 739 F.3d 323, BLR (6th Cir. 2014); *Marmon Coal Co. v. Director, OWCP [Eckman]*, 726 F.3d 387, BLR (3d Cir. 2013); *W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 25 BLR 2-65 (4th Cir. 2011), *cert. denied*, 133 S.Ct. 127 (2012). Consequently, we reject employer's arguments to the contrary.

Because claimant filed her subsequent survivor's claim after January 1, 2005, her claim was pending after March 23, 2010, and the miner was entitled to benefits under a final award at the time of his death, we affirm the administrative law judge's finding that claimant is entitled to receive survivor's benefits pursuant to amended Section 422(l) of the Act, 30 U.S.C. §932(l).

Accordingly, the Decision and Order Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge