

BRB No. 10-0298 BLA

PATRICIA MAYNARD)	
(Widow of HARMON MAYNARD))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
LAUREL RUN MINING COMPANY)	DATE ISSUED: 12/30/2010
)	
Employer-Respondent)	
)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Douglas A. Smoot and Wendy G. Adkins (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Paul L. Edenfield (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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (09-BLA-05136) of Administrative Law Judge Richard A. Morgan (the administrative law judge) on a

survivor's claim¹ filed on February 27, 2009, 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). The administrative law judge found that claimant established that the miner had at least thirty years of coal mine employment. Adjudicating the claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish that the miner had pneumoconiosis at 20 C.F.R. §718.202(a) and that his death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's findings that the evidence failed to establish pneumoconiosis at Section 718.202(a) and death due to pneumoconiosis at Section 718.205(c). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not responded to the merits of the appeal.

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, *inter alia*, 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.

In response to the new amendments, both claimant and the Director agree that the new amendments are applicable in this case, as the survivor's claim was filed after January 1, 2005, and claimant established that the miner had at least thirty years of coal mine employment. *See* 30 U.S.C. §921(c)(4). Claimant and the Director also agree that the administrative law judge's decision denying benefits must be vacated and the case

¹ Claimant is the widow of a miner, who died on December 28, 2007. Director's Exhibit 8. Pursuant to the living miner's claim filed on February 27, 2007, Director's Exhibit 4, Administrative Law Judge Richard A. Morgan denied benefits on May 28, 2009, because, while a totally disabling respiratory impairment was established at 20 C.F.R. §718.204(b), the existence of pneumoconiosis was not established at 20 C.F.R. §718.202(a). On July 29, 2010, however, the Board vacated the denial of benefits and remanded the miner's claim to the administrative law judge for consideration of whether the miner was entitled to invocation of the rebuttable presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), in light of Judge Morgan's findings of thirty-four years of coal mine employment and total disability. *Maynard v. Laurel Run Mining Co.*, BRB Nos. 09-0671 BLA and 09-0671 BLA-A (July 29, 2010)(unpub.). If the administrative law judge awards benefits on the miner's claim, claimant would be derivatively entitled to benefits pursuant to amended Section 932(l).

remanded to the administrative law judge to address whether claimant is entitled to the Section 411(c)(4) presumption. The Director maintains that because the presumption alters the required findings of fact and the allocation of the burden of proof, the administrative law judge must allow the parties the opportunity to submit additional, relevant evidence, in compliance with the evidentiary limitations at 20 C.F.R. §725.414. Claimant also contends that it is appropriate that the parties be given leave to submit additional evidence. Employer asserts that, although the amendments “may affect” this case, remand of the case is not necessary, because it has “effectively rebutted” the Section 411(c)(4) presumption based on the administrative law judge’s determination that the miner did not have pneumoconiosis. Thus, employer urges affirmance of the administrative law judge’s denial of benefits. Alternatively, employer contends that if the Board remands this case, the administrative law judge should be instructed to allow employer to develop, without limitation, evidence necessary to satisfy its new burden of proof. Employer also contends that retroactive application of the amendments is unconstitutional, as it violates employer’s right to due process and constitutes a taking of private property.²

Based upon the parties’ responses and our review, we conclude that this case is affected by the recent amendments, which reinstated, in pertinent part, the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), for claims filed after January 1, 2005, that were pending on or after March 23, 2010. Under Section 411(c)(4), in pertinent part, if a claimant establishes that the miner had at least fifteen years of qualifying coal mine employment and a totally disabling respiratory impairment, there is a rebuttable presumption that the miner died due to pneumoconiosis. 30 U.S.C. §921(c)(4). In this case, claimant filed her claim after January 1, 2005, and the administrative law judge credited the miner with thirty years of coal mine employment. Claimant must, therefore, be provided the opportunity to establish that the requirements are satisfied in this survivor’s claim, for invocation of the Section 411(c)(4) presumption, that the miner’s death was due to pneumoconiosis, an avenue of entitlement that was not previously open to claimant. *See* 30 U.S.C. §921(c)(4).

² We deny employer’s request to hold this case in abeyance until such time as the Department of Labor issues guidelines or promulgates new regulations implementing the statutory amendments. We also deny employer’s request to hold the case in abeyance because the constitutionality of the new amendments has been challenged, as employer does not indicate that any court has enjoined the application of or ruled on the validity of the recent amendments to the Act.

Accordingly, we vacate the administrative law judge's denial of benefits on this survivor's claim pursuant to 20 C.F.R. Part 718, and remand the case to the administrative law judge for consideration of whether claimant is entitled to invocation of the rebuttable presumption at Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4). If the administrative law judge finds that claimant is entitled to invocation of the Section 411(c)(4) presumption, then the administrative law judge must determine whether employer has rebutted the presumption. 30 U.S.C. §921(c)(4). On remand, the administrative law judge must allow for the submission of additional evidence by the parties to address the change in law. *See Harlan Bell Coal Co. v. Lemar*, 904 F.2d 1042, 1047-50, 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. 20 C.F.R. §725.414. If evidence exceeding those limitations is offered, it must be justified by a showing of good cause. 20 C.F.R. §725.456(b)(1).³

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.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

³ Because the administrative law judge has not yet considered the applicability of the amended version of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) to this claim, we decline to address, as premature, employer's argument that the retroactive application of the amendment to this claim is unconstitutional.