

U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
PITTSBURGH, PENNSYLVANIA

LOLA DAVIS, Widow of	)	
JAMES L. DAVIS,	)	
	)	
Claimant	)	
	)	
v.	)	Case No. 2008-BLA-05450
	)	
CANNELTON INDUSTRIES, INC.,	)	
	)	OWCP No. xxx-xx-8957
Employer	)	
	)	
WELLS FARGO DISABILITY	)	
MANGEMENT,	)	
	)	
Carrier	)	
	)	
and	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	
UNITED STATES DEPARTMENT	)	
OF LABOR,	)	
	)	
Party-in-Interest	)	

DIRECTOR'S MOTION FOR RECONSIDERATION

The Director, Office of Workers' Compensation Programs, United States Department of Labor, by counsel, respectfully requests that Administrative Law Judge Michael P. Lesniak reconsider his February 25, 2010 Decision and Order denying benefits to Lola Davis, the eligible survivor of former coal miner James L. Davis, who

had been awarded black lung benefits on his own claim. 20 C.F.R. § 725.479(b). As explained below, Section 1556 of the recently-enacted Patient Protection and Affordable Care Act (“PPACA”), Pub. L. No. 111-148, § 1556 (2010), amends section 422(l) of the Black Lung Benefits Act, 30 U.S.C. § 932(l) (“BLBA”). Under amended section 422(l), which applies to this claim, Mrs. Davis is entitled to benefits based on the award of black lung benefits that was made to her deceased husband. Consequently, the ALJ should vacate his decision and order and issue a new decision awarding benefits to Mrs. Davis.

1. The Black Lung Benefits Reform Act of 1977 added Section 422(l) to the BLBA. Section 422(l) originally provided, “[i]n no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this subchapter at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner.” This provision allowed an eligible survivor of a miner to establish entitlement to benefits based solely on the fact that the miner had been awarded benefits during his lifetime. *See Pothering v. Parkson Coal Co.*, 861 F.2d 1321, 1327 (3d Cir. 1988).

2. The Black Lung Benefits Amendments of 1981 eliminated this method of establishing entitlement for claims filed on or after the effective date of the amendments – January 1, 1982. *Id.* Congress achieved this result by adding to section

422(l) language stating that provision applied, “except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981.” Thus, in the case of a miner who filed his claim after January 1, 1982, the 1981 amendments prohibited his survivor from obtaining benefits based on the miner’s award. Instead, those survivors could establish entitlement only by demonstrating that the miner died due to pneumoconiosis. *Mancia v. Director, OWCP*, 130 F.3d 579, 584 n.6 (3d Cir. 1997).

3. Section 1556(b) of the PPACA returns Section 422(l) to its original form by removing the language that limited its application to miners’ claims filed prior to January 1, 1982. Section 1556(b) states:

Continuation of Benefits.- Section 422(l) of the Black Lung Benefits Act (30 U.S.C. 932(l)) is amended by striking “, except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981”.

Pub. L. No. 111-148, § 1556(b) (2010). The effect of this amendment is to again make an eligible survivor entitled to receive benefits based solely on the lifetime award to the miner and without having to prove that the miner died due to pneumoconiosis.

4. Section 1556(c) specifies the cohort of claims to which the 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.

L. No. 111-148, § 1556(c) (2010). *See also* 156 Cong. Rec. S2083-84 (daily ed. March 25, 2010)(statement of Sen. Byrd). The PPACA was enacted on March 23, 2010, the date it was signed into law by President Barack Obama.

5. Section 1556 thus makes two things clear. First, it explicitly defines the scope of claims to which it applies: all miners and survivors claims that are filed after January 1, 2005 and that are pending on or after March 23, 2010. Second, in the case of an eligible survivor whose claim meets the filing and pending date requirements, the survivor need not prove that the miner's death was due to pneumoconiosis to be entitled to benefits if the miner had been awarded benefits on his own claim.

6. Lola Davis is the survivor of coal miner, James L. Davis. Director's Exhibit ("DX") 8. At the time of his death, Mr. Davis was receiving benefits under the BLBA pursuant to a claim he filed during his lifetime. *See* ALJ's February 25, 2010 Decision and Order at 2. Mr. Davis died on March 24, 2007. DX 9. Mrs. Davis filed her claim for survivor's benefits on May 11, 2007. DX 2. There is no dispute that Mrs. Davis meets the BLBA's relationship and dependency requirements, and thus is an eligible survivor. *See* DX 21.

7. Mrs. Davis's claim falls within the class of survivor's claims affected by Section 1556(b) of the PPACA. Her husband was receiving federal black lung benefits at the time of his death. She filed her claim after January 1, 2005. Her claim is still

pending by virtue of the fact that the Director is filing this Motion for Reconsideration within 30 days of the filing of the ALJ's Decision and Order in the Department of Labor's district director's office.<sup>1</sup> See 20 C.F.R. § 725.479(a) (providing that an ALJ's decision and order does not become final if proceedings for the suspension or setting aside of such order are instituted within 30 days of the filing of the decision and order in the office of the district director).

In sum, in light of Section 1556(b) of the PPACA, Mrs. Davis is entitled to survivor's benefits under the BLBA. Therefore, the Director respectfully requests that the ALJ vacate his February 25, 2010 Decision and Order - Denying Benefits, and issue a decision awarding Mrs. Davis survivor's benefits.

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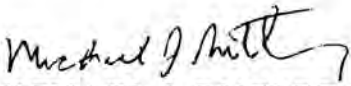
<sup>1</sup> The February 25, 2010 Decision and Order was filed in the district director's office on March 2, 2010.


WHEREFORE, the Director respectfully requests that the ALJ vacate his February 25, 2010 Decision and Order denying benefits and issue a Decision and Order awarding survivor's benefits to Mrs. Davis.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2010, a copy of the foregoing Motion for Reconsideration was served by mail, postage prepaid, on the following:

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