

BRB No. 11-0631 BLA

DORTHULA HARGRAVE	)	
(Widow of ROY HARGRAVE)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BISHOP COAL COMPANY	)	DATE ISSUED: 06/15/2012
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Order Granting District Director's Motion for Summary Decision and Denying Employer's Motion for Partial Summary Judgment of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Maia S. Fisher (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:

Employer appeals the Order Granting District Director's Motion for Summary Decision and Denying Employer's Motion for Partial Summary Judgment<sup>1</sup> (2010-BLA-5849) of Administrative Law Judge Linda S. Chapman awarding benefits on a survivor's claim, 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).<sup>2</sup> Claimant filed her application for benefits on June 8, 2010. In response to the district director's proposed decision and order awarding benefits, employer requested a hearing. After the case was transferred to the Office of Administrative Law Judges, employer submitted a Motion for Partial Summary Judgment as a Matter of Law, stating that claimant is not automatically entitled to survivor's benefits under amended Section 422(l) of the Act, 30 U.S.C. §932(l). The Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Summary Decision, arguing that claimant is automatically entitled to an award of benefits.<sup>3</sup>

In the administrative law judge's Order Granting District Director's Motion for Summary Decision and Denying Employer's Motion for Partial Summary Judgment, issued on May 20, 2011, she found that, pursuant to amended Section 932(l), claimant is

---

<sup>1</sup> The title of the order issued by the administrative law judge indicates that the district director filed a motion for summary decision in this claim. In the body of the administrative law judge's order, she correctly identified the Director, Office of Workers' Compensation Programs, as the party who filed the motion for summary decision. Order at 2-4.

<sup>2</sup> Claimant is the widow of the miner, Roy Hargrave. The miner filed a claim for benefits on December 30, 1982. Director's Exhibit 1. Administrative Law Judge Nicholas J. Laezza awarded benefits. *Id.* Employer appealed to the Board, which affirmed the award of benefits. *Hargrave v. Bishop Coal Co.*, BRB No. 89-0207 BLA (Nov. 23, 1992) (unpub.). The miner died on March 6, 2008. Director's Exhibit 4.

<sup>3</sup> Section 1556 of the Patient Protection and Affordable Care Act (PPACA) included amendments to the Black Lung Benefits Act (the Act), affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010. 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). In pertinent part, the amendments revived Section 422(l) of the Act, 30 U.S.C. §932(l), providing 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.

entitled to benefits based on the award of benefits in the miner's claim. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the constitutionality of amended Section 932(l), and asserts, in the alternative, that it does not apply to the present claim, based on the filing date of the miner's claim. Claimant has not filed a response brief in this appeal. The Director responds and asserts that the administrative law judge properly awarded benefits under amended Section 932(l).<sup>4</sup>

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.<sup>5</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer asserts that the retroactive application of amended Section 932(l) to this claim constitutes a violation of its due process rights and an unconstitutional taking of private property. Employer also maintains that the operative date for determining eligibility for survivor's benefits pursuant to amended Section 932(l) is the date that the miner's claim was filed, not the date that the survivor's claim was filed.

We reject employer's contention that retroactive application of the automatic entitlement provisions of amended Section 932(l) to claims filed after January 1, 2005, constitutes a due process violation and a taking of private property, for the same reasons the Board rejected substantially similar arguments in *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-200 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011) (Order) (unpub.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011). *See also Keene v. Consolidation Coal Co.*, 645 F.3d 844, 24 BLR 2-385 (7th Cir. 2011). Further, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has affirmed the Board's holding that the operative date for determining eligibility for survivor's benefits under amended Section 932(l) is the date that the survivor's claim was filed, not the date that the miner's claim was filed. *W. Va. CWP*

---

<sup>4</sup> By Order dated January 27, 2012, the Board denied employer's motion to hold this case in abeyance, pending the resolution of the legal challenges to the PPACA. *Hargrave v. Bishop Coal Co.*, BRB No. 11-0631 BLA (Jan. 27, 2012) (Order) (unpub.).

<sup>5</sup> The record reflects that the miner's coal mine employment was in West Virginia. Director's Exhibit 1. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

*Fund v. Stacy*, 671 F.3d 378 (4th Cir. 2011), *aff'g Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010). We reject, therefore, employer's argument to the contrary.

Accordingly, the administrative law judge's Order Granting District Director's Motion for Summary Decision and Denying Employer's Motion for Partial Summary Judgment is affirmed.

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge