

BRB No. 12-0256 BLA

SHIRLEY CURTIS)	
(Widow of HOWARD CURTIS))	
)	
Claimant-Respondent)	
)	
v.)	
)	
LANCASHIRE COAL COMPANY)	DATE ISSUED: 06/20/2012
)	
and)	
)	
ISPAT/INLAND, INCORPORATED)	
)	
Employer/Carrier-Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Summary Decision - Awarding Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Lynda D. Glagola (Lungs at Work), McMurray, Pennsylvania, lay representative, for claimant.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose, LLC), Johnstown, Pennsylvania, for employer.

Jeffrey S. Goldberg (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 Summary Decision - Awarding Benefits (2012-BLA-5173) of Administrative Law Judge Michael P. Lesniak, rendered on a survivor's claim, filed on October 17, 2011, pursuant to the provisions of the Black Lung Benefits Act,¹ 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).

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).

In ruling on a motion for summary decision filed by the Director, Office of Workers' Compensation Programs (the Director), the administrative law judge found that claimant is derivatively entitled to survivor's benefits, pursuant to amended Section 932(l), as her claim was filed after January 1, 2005, the claim was pending on or after March 23, 2010, and the miner was receiving benefits pursuant to a claim filed during his lifetime.² Accordingly, the administrative law judge awarded benefits.

On appeal, employer requests that the award of survivor's benefits in this case be vacated, pending resolution of the constitutionality of the PPACA. Employer contends that application of amended Section 932(l) is premature because there will be no way for employer to recoup improperly paid benefits in the event that the PPACA is ultimately found to be unconstitutional. Claimant responds, urging the Board to affirm the award. The Director has filed a Motion for Summary Affirmance of Award.

¹ Claimant is the widow of the miner, who died on April 20, 2009. Director's Exhibit 4.

² At the time of his death, the miner had been found to be entitled to federal black lung benefits, pursuant to a claim filed on October 11, 2006, which was awarded by Administrative Law Judge Michael P. Lesniak on January 7, 2009. The award of benefits in the miner's claim was affirmed by the Board on January 27, 2010 and by the United States Court of Appeals for the Third Circuit on April 6, 2011. *Ispat/Inland, Inc. v. Director, OWCP [Curtis]*, No. 10-0322 (3d Cir. Apr. 6, 2011) (unpub.), *aff'g*, *Curtis v. Inland Steel/Lancashire Coal Co.*, BRB No. 09-0356 BLA (May 14, 2010) (unpub.). That award became final on May 6, 2011. *Id.*

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

In this case, the administrative law judge found that claimant satisfied her burden to establish each fact necessary to demonstrate her entitlement under amended Section 932(l): that she filed her claim after January 1, 2005; that she is an eligible survivor of the miner; that her claim was pending on or after March 23, 2010; and that the miner was determined to be eligible to receive benefits at the time of his death. Summary Decision - Awarding Benefits at 2. As the Director accurately notes, employer has not challenged any of these findings, so they are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Employer's Petition for Review and Supporting Memorandum at 7. Further, we reject employer's request that this case be held in abeyance pending resolution of the legal challenges to the PPACA. *See W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 383-89 (4th Cir. 2011), *aff'g Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010); *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-201 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011) (Order), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011) (unpub.). We, therefore, grant the Director's motion, and affirm the administrative law judge's determination that claimant is derivatively entitled to benefits pursuant to amended Section 932(l) of the Act. 30 U.S.C. §932(l).

³ The case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as the miner's coal mine employment was in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc). Director's Exhibit 1.

Accordingly, the administrative law judge's Summary Decision - Awarding Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge