

BRB No. 12-0152 BLA

SHIRLEY A. DOBRZYNSKI)	
(Widow of EDWARD E. DOBRZYNSKI))	
)	
Claimant-Respondent)	
)	
v.)	
)	
VALLEY CAMP COAL COMPANY)	DATE ISSUED: 10/31/2012
)	
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 Granting the Claimant's Motion for Summary Judgment of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson and Ann Megan Davis (Johnson, Jones, Snelling, Gilbert & Davis, P.C.), Chicago, Illinois, for claimant.

William S. Mattingly and Kevin T. Gillen (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Sarah M. Hurley (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 Decision and Order Granting the Claimant's Motion for Summary Judgment (2011-BLA-5924) of Administrative Law Judge Richard K. Malamphy (the administrative law judge) rendered on a survivor's claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011)(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), Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010)(codified at 30 U.S.C. §§921(c)(4) and 932(l)). 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).

On July 14, 2011, claimant¹ filed a Motion for Summary Judgment, arguing that under amended Section 932(l), and given the filing date of her claim, she is entitled to benefits based on the award of benefits to her deceased husband.² In response, employer argued that the administrative law judge should deny claimant's request for summary judgment because it is premature. Employer asserted that there was a material issue of fact with regard to the award of benefits for the miner because it was not final. The Director, Office of Workers' Compensation Programs (the Director), did not file a response to claimant's motion.

In his Decision and Order Granting the Claimant's Motion for Summary Judgment, the administrative law judge found that claimant satisfied the criteria for derivative entitlement pursuant to amended Section 932(l), and awarded benefits to commence as of January 2005, the month in which the miner died.

¹ Claimant is the widow of the miner, who died on January 9, 2005. Director's Exhibit 5. She filed her survivor's claim on May 5, 2010. Director's Exhibit 2.

² The miner filed claims on May 14, 1982, April 13, 1999, and November 2, 2000. On February 25, 2010, subsequent to the miner's death, Administrative Law Judge Alice M. Craft issued a Decision and Order, which found the miner entitled to federal black lung benefits at the time of his death. Judge Craft's award of benefits was affirmed by the Board, *Dobrzynski v. Valley Camp Coal Co.*, BRB No. 10-0429 BLA (July 29, 2011) (unpub.), and by the United States Court of Appeals for the Fourth Circuit, *Valley Camp Coal Co. v. Director, OWCP [Dobrzynski]*, 474 Fed.Appx. 155, 2012 WL 2856055 (4th Cir. July 12, 2012).

On appeal, employer contends that the administrative law judge's automatic award of survivor's benefits pursuant to amended Section 932(l) was premature and improper because there was not a final award of lifetime benefits to the miner, as it was appealed to the United States Court of Appeals for the Fourth Circuit.³ Employer also challenges the constitutionality of amended Section 932(l), and its application to this claim.⁴ Both claimant and the Director respond, urging affirmance of the administrative law judge's award of benefits.

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.⁵ 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 argues that retroactive application of the automatic entitlement provisions of amended Section 932(l) to claims filed after January 1, 2005 is unconstitutional, as a violation of employer's due process rights and as a taking of private property, in violation of the Fifth Amendment to the United States Constitution. Employer also contends that the operative date for determining eligibility under amended Section 932(l) is the date the miner's claim was filed, not the date the survivor's claim was filed. The arguments employer makes are virtually identical to the ones that the United States Court of Appeals for the Fourth Circuit recently rejected. *W. Va. CWP*

³ Employer's contention that the administrative law judge's automatic award of survivor's benefits pursuant to amended Section 932(l) was premature and improper because there was not a final award of lifetime benefits to the miner is moot, as the Fourth Circuit has affirmed Judge Craft's award of benefits to the miner. *Dobrzynski*, 474 Fed.Appx. at 155, 2012 WL at 2856055.

⁴ Employer argues that because the Patient Protection and Affordable Care Act (PPACA) is being litigated in the United States Supreme Court, adjudication of this claim should be held in abeyance pending resolution of the constitutionality of the PPACA, and the severability of non-health care provisions by the Court. Subsequent to the filing of employer's Brief in Support of Petition for Review, the Court upheld the constitutionality of the PPACA. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. , 2012 WL 2427810 (June 28, 2012). Thus, employer's argument that this claim should be held in abeyance pending resolution of the constitutionality of the PPACA is moot.

⁵ The record indicates that the miner was employed in the coal mining industry in West Virginia. Accordingly, the law of the Fourth Circuit is applicable. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(en banc).

Fund v. Stacy, 671 F.3d 378, 25 BLR 2-65 (4th Cir. 2011), *aff'g Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), *cert. denied*, 568 U.S. (2012); *see also B & G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 25 BLR 2-13 (3d Cir. 2011). For the reasons set forth in *Stacy*, we reject employer's arguments.⁶

Because claimant filed her survivor's claim after January 1, 2005, her claim was pending after March 23, 2010, and the miner was determined to be eligible to receive benefits 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 Section 422(l) of the Act, 30 U.S.C. §932(l).

Accordingly, the administrative law judge's Decision and Order Granting the Claimant's Motion for 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

⁶ Employer's request that this claim be held in abeyance pending resolution of the legal challenges in *Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), is moot. *W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 25 BLR 2-65 (4th Cir. 2011), *aff'g Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), *cert. denied*, 568 U.S. (2012).