

BRB No. 11-0501 BLA

WANDA LEE CRANOR)
)
 Claimant-Respondent)
)
 v.)
)
 PEABODY COAL COMPANY) DATE ISSUED: 04/04/2012
)
 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 Awarding Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (11-BLA-5822) of Administrative Law Judge Alice M. Craft (the administrative law judge) rendered on a survivor's claim¹ filed 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).

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

¹ Claimant, Wanda Lee Cranor, is the widow of the miner, who died on August 26, 2009. Director's Exhibit 14. Claimant filed her claim for survivor's benefits on May 20, 2010. Director's Exhibit 11.

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).

On February 16, 2011, the administrative law judge issued an Order to Show Cause, directing the parties to submit their positions regarding whether benefits should be awarded, without a hearing, under the automatic survivor entitlement provision of the Black Lung Benefits Act. In response, employer requested that the case be held in abeyance until various legal challenges were resolved and implementing regulations were promulgated or, in the alternative, that a briefing schedule be issued on the issues employer had previously raised. Neither claimant nor the Director, Office of Workers' Compensation Programs (the Director), responded to the administrative law judge's Order.²

The administrative law judge found that claimant is an eligible survivor of the miner, and that claimant met the eligibility requirements for application of amended Section 932(l), as she filed her survivor's claim for benefits after January 1, 2005, the claim was pending on or after March 23, 2010, the effective date of the amendments, and the miner was receiving benefits at the time of his death. Accordingly, the administrative law judge found claimant entitled to survivor's benefits, commencing as of May 2010.

On appeal, employer argues that the administrative law judge erred in denying employer's request that further proceedings or actions related to this claim be held in abeyance, pending resolution of the constitutional challenges to the PPACA in federal court. Notwithstanding the issue of the constitutionality of the PPACA, however, employer avers that the operative date for determining eligibility pursuant to amended Section 932(l) is the date of filing of the miner's claim. Neither claimant, nor the Director, has responded.

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,

² At the time of his death, the miner was receiving federal black lung benefits pursuant to an award issued by Administrative Law Judge Mollie W. Neal, which was affirmed by the Board. *Cranor v. Peabody Coal Co.*, BRB No. 01-0726 BLA (June 26, 2002) (unpub.); Director's Exhibit 3.

and in accordance with applicable law.³ 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).

Subsequent to the issuance of the administrative law judge’s Decision and Order in this case, the United States Court of Appeals for the Fourth Circuit upheld the Board’s decision in *Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), 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. *West Virginia CWP Fund v. Stacy*, F.3d , BLR , No. 11-1020, 2011 WL 6396510 (4th Cir. Dec. 21, 2011). For the reasons set forth in *Stacy*, we reject employer’s arguments to the contrary. Further, consistent with our reasoning 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), we reject employer’s request that this case be held in abeyance pending resolution of the legal challenges to the PPACA. *See Mathews*, 24 BLR at 1-201; *Fairman v. Helen Mining Co.*, 24 BLR 1-225 (2011), *appeal docketed*, No. 11-2445 (3d Cir. May 31, 2011).

Because claimant filed her survivor’s claim after January 1, 2005; her claim was pending on or after March 23, 2010; and the miner was receiving benefits under a final award 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).

³ As the miner’s last coal mine employment occurred in Kentucky, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*); Director’s Exhibit 1.

Accordingly, the Decision and Order Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge