

BRB No. 11-0587 BLA

SYLVIA B. FIELDS)	
(Widow of JARRELL H. FIELDS))	
)	
Claimant-Respondent)	
)	
v.)	
)	
CLINCHFIELD COAL COMPANY)	
)	DATE ISSUED: 04/19/2012
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Order Awarding Survivor's Benefits of William S. Colwell, Administrative Law Judge, United States Department of Labor.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Paul L. Edenfield (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 Awarding Survivor's Benefits (2011-BLA-5422) of Administrative Law Judge William S. Colwell rendered on a survivor's subsequent claim 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).

Claimant¹ filed her initial claim for survivor's benefits on August 8, 2003. Director's Exhibit 2. In a Proposed Decision and Order dated April 8, 2004, the district director denied benefits, finding that the evidence did not establish that the miner had pneumoconiosis or that the miner's death was due to pneumoconiosis. *Id.* Claimant did not pursue the claim further.

In 2010, Congress amended the Act, affecting claims filed after January 1, 2005 that were pending on or after March 23, 2010. The amendments, in pertinent part, revive Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides that a 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*).

Claimant filed this subsequent claim on September 17, 2010. Director's Exhibit 3. The district director awarded benefits to claimant pursuant to amended Section 932(*l*) and employer requested a hearing. Director's Exhibits 8, 9.

While the case was pending before the administrative law judge, the Director, Office of Workers' Compensation Programs (the Director), moved for a summary decision, asserting that amended Section 932(*l*) automatically entitled claimant to benefits as a matter of law. Employer filed a response, opposing the Director's motion.

In his Order Awarding Survivor's Benefits, the administrative law judge found claimant to be automatically entitled to benefits under amended Section 932(*l*). Accordingly, the administrative law judge awarded survivor's benefits commencing as of May 2004, the month after claimant's initial survivor's claim was denied. Decision and Order at 3.

On appeal, employer challenges the constitutionality of amended Section 932(*l*), and its application to this claim.² Claimant has not filed a response brief. The Director

¹ Claimant is the surviving spouse of the miner, who died on July 19, 2003. Director's Exhibits 3-5. At the time of his death, the miner was receiving federal black lung benefits pursuant to an October 11, 1991, decision by an administrative law judge that awarded benefits on his lifetime claim. Director's Exhibits 1, 2.

² Employer does not challenge the administrative law judge's findings that claimant established 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. Therefore, those findings are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

responds in support of the administrative law judge's application of amended Section 932(l), urging affirmance of the award of benefits. The Director, however, contends that the appropriate date for the commencement of benefits in this case is June 2004, the month after the month in which the denial of the prior survivor's claim became final.

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

Employer argues that retroactive application of amended Section 932(l) is unconstitutional, as a violation of employer's due process rights and as an unlawful taking of employer's property, in violation of the Fifth Amendment to the United States Constitution. Employer's Brief 9-18. 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. Employer's Brief 18-28. These arguments have been rejected by the United States Court of Appeals for the Fourth Circuit and, therefore, lack merit. *W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 383-90 (4th Cir. 2011), *aff'g Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010); *see also B&G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 254-63 (3d Cir. 2011). We also reject employer's request that this case be held in abeyance pending resolution of the legal challenges to Public Law No. 111-148. *See Stacy*, 671 F.3d at 383 n.2; *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-201 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011) (unpub. Order), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011).

Employer next contends that, because claimant's prior claim for survivor's benefits was denied and the denial became final, fundamental principles of res judicata or claim preclusion set forth in 20 C.F.R. §725.309 bar her subsequent claim. We disagree. The principles of res judicata addressed in 20 C.F.R. §725.309, requiring that a subsequent claim be denied unless a change in an applicable condition of entitlement is established, are not implicated in the context of a survivor's subsequent claim filed within the time limitations set forth under Section 1556 of Public Law No. 111-148, because entitlement thereunder is not tied to relitigation of the prior finding that the miner's death

³ The miner's coal mine employment was in Virginia. Director's Exhibit 6. 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, 1-202 (1989) (en banc).

was not due to pneumoconiosis. *Richards v. Union Carbide Corp.*, BRB Nos. 11-0414 BLA & 11-0414 BLA-A, slip op. at 4-6 (Jan. 9, 2012) (en banc) (McGranery, J., concurring and dissenting) (Boggs, J., dissenting), *appeal docketed*, No. 12-1294 (4th Cir. Mar. 8, 2012). Therefore, contrary to employer's contention, the automatic entitlement provisions of amended Section 932(l) are available to an eligible survivor who files a subsequent claim within the time limitations established in Section 1556. *Id.*

Finally, the Director argues that the administrative law judge erred in setting the benefits commencement date as May 2004. Noting that benefits on a subsequent claim may not commence until the month after the prior denial became final, *see* 20 C.F.R. §725.309(d)(5), the Director argues that claimant is entitled to benefits commencing in June 2004, rather than in May 2004. The Board recently adopted the Director's position, holding that benefits are payable in a subsequent survivor's claim filed within the time limitations set forth in Section 1556 from the month after the month in which the denial of the prior claim became final. *Richards*, slip op. at 7. Here, the district director denied claimant's initial survivor's claim on April 8, 2004, and that denial became final thirty days later, in May 2004. *See* 20 C.F.R. §§725.418, 725.419(d); Director's Exhibit 2. Consequently, we modify the administrative law judge's determination of the commencement date for benefits to June 2004. 20 C.F.R. §725.309(d)(5).

Accordingly, the administrative law judge's Order Awarding Survivor's Benefits is affirmed, as modified to reflect June 2004 as the date from which benefits commence.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge