

BRB No. 12-0219 BLA

BETTY L. LENTZ)	
(Widow of LLOYD L. LENTZ))	
)	
Claimant-Respondent)	
)	
v.)	
)	
ISPAT/INLAND, INCORPORATED)	DATE ISSUED: 04/30/2012
)	
Employer-Petitioner)	
)	
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.

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, 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 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).

Pursuant to 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 422(l) of the Act, 30 U.S.C. §932(l), amended by Public Law No. 111-148, Section 1556(b), 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 the resolution of challenges to the constitutionality of Public Law No. 111-148. Employer contends that application of Section 1556 of the PPACA is premature because there will be no way for employer to recoup improperly paid benefits in the event that Public Law No. 111-148 is ultimately found to be unconstitutional. Claimant responds, urging the Board to affirm the award. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion for Summary Affirmance, requesting that the Board deny employer's request and affirm the

¹ Claimant is the widow of the miner, who died on February 11, 2009. Director's Exhibit 7. Claimant filed her survivor's claim on September 1, 2011. Director's Exhibit 3.

² At the time of his death, the miner was found entitled to federal black lung benefits, pursuant to a claim filed on March 24, 2003, which was awarded by Administrative Law Judge Michael P. Lesniak on May 5, 2008. The award of benefits in the miner's claim was affirmed by the Board on June 18, 2009 and by the United States Court of Appeals for the Third Circuit on March 11, 2011. *Ispat/Inland, Inc. v. Director, OWCP [Lentz]*, No. 09-4461 (3d Cir. Mar. 11, 2011)(unpub.), *aff'g*, *[Lentz] v. Lancashire Coal Co.*, BRB No. 08-0640 BLA (June 18, 2009)(unpub.).

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 supported by substantial evidence, is rational, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359, 363 (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. Decision and Order at 1-2. As the Director accurately notes, employer has not challenged any of these findings. *See* Employer's Brief at 7. 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); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Moreover, we deny employer's request to vacate the award of benefits pending resolution of the constitutional challenges to the PPACA.

Accordingly, the Director's Motion for Summary Affirmance is granted, and 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