

BRB No. 10-0675 BLA

KATHY STARKS)	
(Widow of ELIGAH STARKS))	
)	
Claimant-Respondent)	
)	
v.)	
)	
U.S. STEEL MINING COMPANY, LLC)	DATE ISSUED: 08/03/2011
)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Order Granting Claimant's Motion for Decision and Order Awarding Benefits Based on Automatic Entitlement of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Abigail P. van Alstyne (Quinn, Walls, Weaver & Davies, LLP), Birmingham, Alabama, for claimant.

Neil Richard Clement (RichardsonClement PC), Birmingham, Alabama, for employer.

Michelle S. Gerdano (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 Granting Claimant’s Motion for Decision and Order Awarding Benefits Based on Automatic Entitlement (Order) (09-BLA-5586) of Administrative Law Judge Theresa C. Timlin 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 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). Claimant filed a motion, requesting an award of benefits, based on the automatic entitlement provision of amended Section 422(l), 30 U.S.C. §932(l). Employer opposed claimant’s motion. On June 11, 2010, the administrative law judge directed the parties to show cause why an order awarding benefits should not be entered in this case. In response, the Director, Office of Workers’ Compensation Programs (the Director), moved for a summary decision, arguing that, under amended Section 932(l), and given the filing date of her claim, claimant was entitled to benefits based on the award to her deceased husband. Employer conceded that claimant “appears” to meet the requirements for derivative entitlement, but challenged the constitutionality of the relevant provision, and asserted that its application conflicts with the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2)(the APA).

The administrative law judge determined that the provisions of amended Section 932(l) were applicable, and that there were no issues of material fact in contention. The administrative law judge denied employer’s request to hold the case in abeyance until the Department of Labor (DOL) issues implementing regulations, and declined to address employer’s remaining objections to the retroactive application and constitutionality of the

¹ Claimant is the widow of the miner, who died on February 25, 2006. Director’s Exhibit 12. At the time of his death, the miner was receiving federal black lung benefits pursuant to a lifetime award issued on May 9, 2000. Director’s Exhibit 1. Claimant filed her claim for survivor’s benefits on April 5, 2006. Director’s Exhibit 2. On July 7, 2008, Administrative Law Judge Adele H. Odegard denied benefits. Director’s Exhibit 61. On March 16, 2009, claimant filed a motion for modification, alleging a mistake in a determination of fact. Director’s Exhibit 63. The case was subsequently assigned to Administrative Law Judge Theresa C. Timlin.

amendments. Accordingly, the administrative law judge found that claimant meets the eligibility criteria for automatic entitlement, and awarded benefits.

On appeal, employer challenges the administrative law judge's application of amended Section 932(l) to this case on procedural and constitutional grounds. Employer also maintains that application of the automatic entitlement provisions of amended Section 932(l) is premature, and that without such application, the evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Claimant and the Director respond, urging affirmance of the administrative law judge's award of benefits, and assert that employer's further challenges to the PPACA are not within the purview of this Board.

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.² 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 the operative date for determining eligibility for survivor's benefits pursuant to amended Section 932(l) is the date the miner's claim was filed, and not the date the survivor's claim was filed. Employer also maintains that retroactive application of amended Section 932(l) is unconstitutional, as it violates employer's due process rights and constitutes an unlawful taking of employer's property. Additionally, employer argues that amended Section 932(l) is ambiguous and unenforceable because it creates irreconcilable inconsistencies in the Act, and improperly relieves claimant of her burden of proof. Employer requests that this case be held in abeyance until DOL issues guidelines or promulgates regulations implementing amended Section 932(l). Further, employer argues that this case should be held in abeyance pending the resolution of legal challenges to Public Law No. 111-148. Employer's arguments lack merit.

The Board has held that the operative filing 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. *Stacy v. Olga Coal Co.*, 24 BLR 1-207, 1-214 (2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011). The Board specifically held that an eligible survivor who files a claim after January 1, 2005, that is pending on or after the March 23, 2010 effective date of the Section 1556 amendments, is entitled to benefits, based solely on the miner's lifetime award, without having to prove that the miner's death was due to pneumoconiosis. *Id.*; *see* 30 U.S.C. §932(l).

² This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit, as the miner's coal mine employment was in Alabama. *See* Director's Exhibit 2; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

We also reject employer's arguments regarding the constitutionality of the amendments, as applied to this case, for the same reasons the Board rejected identical arguments 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); *see also Keene v. Consolidation Coal Co.*, F.3d , 2011 WL 1886106 (7th Cir. 2011).

We further reject employer's assertion that amended Section 932(l) is rendered unenforceable by language in Sections 411(a) and 412(a)(2) of the Act, 30 U.S.C. §§921(a), 922(a)(2). Those two sections provide, in relevant part, that benefits are to be paid at the applicable rate to a survivor where a miner was totally disabled due to pneumoconiosis at the time of his death, "except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981. . . ." 30 U.S.C. §§921(a), 922(a)(2). As the Board recently held in *Fairman v. Helen Mining Co.*, 24 BLR 1- , BRB No. 10-0494 BLA (Apr. 29, 2011), Section 932(l), as amended, is not rendered inapplicable by the language in Sections 921(a) and 922(a)(2). In Section 1556 of the PPACA, Congress specifically amended Section 422(l) of the Act by striking its former language stating that the provision could not apply to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, and mandated that the amendment "*shall apply* with respect to claims," such as this one, "filed under . . . Part C . . . after January 1, 2005, that are pending on or after the date of enactment of this Act." Pub. L. No. 111-148, §1556(c), 124 Stat. 119 (2010)(emphasis added). Thus, such survivors' claims filed after January 1, 2005, in which the survivor has derivative entitlement, are not subject to the language that employer highlights in 30 U.S.C. §§921(a), 922(a)(2), to the extent that it may be inconsistent with Section 932(l). *Fairman*, slip op. at 4.

The Board also held that Section 932(l) does not improperly relieve an eligible survivor of his or her burden of proof, in contravention of Section 7(c) of the APA. *Fairman*, slip op. at 5; *see* Employer's Brief at 34-37. Amended Section 932(l) did not alter a survivor's burden of proof; it altered the facts that a certain class of survivors must prove to qualify for benefits. Here, 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 March 23, 2010, and that the miner was determined to be eligible to receive benefits at the time of his death. Therefore, the administrative law judge properly determined that claimant is derivatively entitled to benefits pursuant to amended Section 422(l) of the Act, 30 U.S.C. §932(l).

We reject employer's request that this case be held in abeyance until DOL issues guidelines or promulgates regulations implementing amended Section 932(l). As we noted in *Mathews*, the mandatory language of amended Section 932(l) supports the conclusion that the provision is self-executing, and, therefore, that there is no need to

hold this case in abeyance pending the promulgation of new regulations. *Mathews*, 24 BLR at 1-201. Employer's further request, that this case be held in abeyance pending resolution of the legal challenges to Public Law No. 111-148, is also denied, consistent with our reasoning in *Mathews*, and as no final ruling has been issued.³ We decline to address employer's remaining arguments raising PPACA challenges unrelated to the application of amended Section 422(l) of the Act.⁴

Based on the foregoing, we affirm the administrative law judge's determination that claimant is derivatively entitled to benefits pursuant to amended Section 422(l) of the Act, based solely on the miner's lifetime award.⁵ *See* 30 U.S.C. §932(l).

³ Specifically, employer objects to the application of amended Section 932(l) on the basis that "if any part of the PPACA is unconstitutional, the entire Act is due to be struck as unconstitutional." *See* Public Law No. 111-148, the Patient Protection and Affordable Care Act of 2010 (the PPACA); Employer's Brief at 39.

⁴ Employer asserts that *any* application of the PPACA is premature due to pending litigation, arguing, *inter alia*, that "the individual mandate and penalty of the PPACA are impermissible under the Commerce Clause," and violative of Article I of the Constitution as well as the Fifth, Ninth and Tenth Amendments. Employer's Brief at 25, 38-39, 42-48, 53, 55-58. Additionally, employer objects to the PPACA's changes to Medicaid, the imposition of insurance-related programs, and alleges unconstitutional interference with state sovereignty. *Id.* at 60-63, 64-66, 67-72. We decline to address these matters, as we agree with the Director that challenges unrelated to the discrete application of provisions applicable to cases arising under the Act are not within our purview as a reviewing administrative tribunal.

⁵ In light of our disposition of this case, employer's remaining argument, that the evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), is moot.

Accordingly, the administrative law judge's Order Granting Claimant's Motion for Decision and Order Awarding Benefits Based on Automatic Entitlement is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge