

BRB No. 10-0718 BLA

PEARL CANTLEY)	
(Widow of CHARLES CANTLEY))	
)	
Claimant-Respondent)	
)	
v.)	
)	
ARMCO INCORPORATED/A.K. STEEL)	DATE ISSUED: 08/10/2011
CORPORATION)	
)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Ashley M. Harman (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 Awarding Benefits (10-BLA-5205) of Administrative Law Judge Richard A. Morgan rendered on a survivor's claim¹ filed

¹ Claimant is the widow of the miner, who died on January 25, 2009. Director's Exhibit 9. Claimant filed her claim for survivor's benefits on February 13, 2009.

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).

On May 26, 2010, the Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Summary Decision, asserting that there was no genuine issue as to any material fact concerning claimant's entitlement, and that under amended Section 932(l), and given the filing date of her claim, claimant is entitled to benefits, based on the award to her deceased husband. Employer objected, requesting that the case be held in abeyance pending resolution of legal challenges to the PPACA, or until the Department of Labor promulgates implementing regulations. Alternatively, employer requested a hearing to determine if claimant meets the amended statutory requirements. Employer also maintained that the retroactive application of Section 1556 of Public Law No. 111-148 is unconstitutional and conflicts with other provisions of the Act. An administrative hearing was held on July 29, 2010, limited to claimant's eligibility under the amendments to the Act.

The administrative law judge found that claimant is an eligible survivor of the miner, and that claimant meets the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 422(l) of the Act, 30 U.S.C. §932(l). Accordingly, the administrative law judge awarded survivor's benefits.

On appeal, employer challenges the administrative law judge's application of amended Section 932(l) to this case. Claimant has not filed a response brief. The Director responds, urging the Board to affirm the administrative law judge's award of benefits. Employer filed a reply brief, reiterating its request that the case be held in abeyance pending the resolution of legal challenges to the PPACA.

Director's Exhibit 2. At the time of his death, the miner was receiving federal black lung benefits pursuant to an award issued by Administrative Law Judge Robert Glennon on May 25, 1989. *See* Director's Exhibit 9; *Cantley v. Armco, Inc.*, BRB No. 89-1976 BLA (Feb. 21, 1991)(unpub.).

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. 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 asserts that the operative date for determining eligibility, pursuant to amended Section 932(l), is the date of filing of the miner's claim, and not the filing date of the survivor's claim. Employer maintains that the Director's contrary position is not entitled to deference because it is inconsistent with the plain language of the statute, the regulations, and with prior interpretations by the Director of Section 932(l). Employer further contends that retroactive application of amended Section 932(l) is unconstitutional as a denial of due process and a taking of private property. 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 (2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011). For the reasons set forth in *Stacy*, we reject employer's arguments to the contrary.

We also reject employer's contention that retroactive application of the automatic entitlement provisions of amended Section 932(l) to claims filed after January 1, 2005 constitutes a due process violation and a taking of private property, for the same reasons the Board rejected identical arguments in *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-198-200 (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). Further, we reject employer's request that this case be held in abeyance pending resolution of the legal challenges to the PPACA in federal court, consistent with our reasoning in *Mathews*, 24 BLR at 1-201, and as no final ruling has been issued.

Because claimant filed her survivor's claim after January 1, 2005, her claim was pending on 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 derivatively entitled to 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 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