

BRB No. 11-0143 BLA

LOTTIE C. WALKER)
(Widow of ROBERT L. WALKER))
)
Claimant-Respondent)
)
v.)
)
CIMARRON COAL CORPORATION)
) DATE ISSUED: 08/25/2011
and)
)
OLD REPUBLIC INSURANCE COMPANY)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order on Motion for Reconsideration of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Brent Yonts, Greenville, Kentucky, for claimant.

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

Barry H. Joyner (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 on Motion for Reconsideration (Decision and Order) (2008-BLA-5053) of Administrative Law Judge Donald W. Mosser 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 were enacted, affecting claims filed after January 1, 2005 that were pending on or after March 23, 2010. *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 March 16, 2010, the administrative law judge issued a Decision and Order – Denying Benefits, finding, *inter alia*, that the evidence was 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, Office of Workers' Compensation Programs (the Director), both filed motions for reconsideration, requesting that the administrative law judge reconsider his decision in light of the amendments to the Act. The administrative law judge granted the motions for reconsideration, as both motions were timely filed pursuant to 20 C.F.R. §725.479(b), and the administrative law judge determined that claimant met the eligibility requirements for automatic entitlement under amended Section 422(l) of the Act, 30 U.S.C. §932(l). Specifically, the administrative law judge found that claimant was an eligible survivor of the miner, who was entitled to benefits at the time of his death; the survivor's claim was filed after January 1, 2005; and the claim was pending on March 23, 2010, the effective date of the amendments, because the administrative law judge's decision had not become final pursuant to 20 C.F.R. §725.479(a).² Accordingly, benefits were awarded.

¹ Claimant is the widow of the miner, who died on March 23, 2006. Director's Exhibit 7. Claimant filed her claim for survivor's benefits on May 15, 2006. Director's Exhibit 2. At the time of his death, the miner was receiving federal black lung benefits pursuant to a final award. Decision and Order at 2.

² Section 725.479(a) provides that a decision and order shall become effective when filed in the office of the district director, and unless proceedings for suspension or setting aside of such order are instituted within thirty days of such filing, the order shall become final at the expiration of the thirtieth day after such filing. 20 C.F.R. §725.479(a).

On appeal, employer contends that the administrative law judge's award should be reversed, arguing that the claim was decided prior to the effective date of the PPACA and was, therefore, not pending as of March 23, 2010. Employer also asserts that this case should be held in abeyance pending resolution of the issues of constitutionality and severability of the PPACA and the validity of the amendments to the Act.³ Claimant and the Director respond in support of the award of benefits, to which employer replies.⁴

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).

We reject employer's renewed 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 v. United Pocahontas Coal Co.*, 24 BLR 1-93, 1-200 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011)(Order)(unpub.); *see Fairman v. Helen Mining Co.*, BLR , BRB No. 10-0494 (Apr. 29, 2011). Further, we reject employer's argument that the survivor's claim was not pending on March 23, 2010. The administrative law judge correctly noted that he retained jurisdiction over the survivor's claim, as his order, dated March 16, 2010, had not yet become final pursuant to Section 725.479(a). Decision and Order at 3; *see Hensley v. Grays Knob Coal Co.*, 10 BLR 1-88, 1-91 (1987); 20 C.F.R. §725.479(a), (b).

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 automatically entitled to receive survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l).

Lastly, we note that the administrative law judge's Decision and Order reflects a clerical error regarding the date from which benefit payments commence herein. Because the administrative law judge initially determined that, pursuant to 20 C.F.R. §725.503, the date from which benefits commence in this case is March 1, 2006, the first

³ By Order of March 24, 2011, the Board denied employer's motion to stay briefing schedule and to hold case in abeyance, noting that no court has enjoined the application of the recent amendments to the Act. Employer has renewed its motion to hold case in abeyance.

⁴ We accept the Director's brief in opposition to employer's petition for review as part of the record before the Board. 20 C.F.R. §802.217.

day of the month that the miner died, Decision and Order at 3, it is clear that the administrative law judge's decision contains a clerical error by awarding benefits as of March 1, 2007. See 20 C.F.R. §725.503(b); *Coleman v. Ramey Coal Co.*, 18 BLR 1-9, 1-17 (1993), citing *Johnson v. Director, OWCP*, 7 BLR 1-206 (1984); *McLaughlin v. Jones & Laughlin Steel Corp.*, 2 BLR 1-103 (1979). Accordingly, we modify the administrative law judge's decision to reflect the correct date from which benefits commence as March 1, 2006.

Accordingly, the administrative law judge's Decision and Order on Motion for Reconsideration is affirmed, as modified.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge