

BRB No. 11-0435 BLA

KAREN DUPPSTADT)
(Widow of JERRY DUPPSTADT))
)
Claimant-Respondent)
)
v.)
)
LASKY CONSTRUCTION COMPANY)
) DATE ISSUED: 02/28/2012
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.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose, LLC), Johnstown, Pennsylvania, for employer.

Rita Roppolo (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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Summary Decision - Awarding Benefits (2011-BLA-5219) of Administrative Law Judge Michael P. Lesniak, rendered on a survivor's claim¹ filed

¹ Claimant is the widow of the miner, who died on January 10, 2010. Director's Exhibit 4. Claimant filed her claim for survivor's benefits on February 23, 2010.

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. The amendments, in pertinent part, revive Section 932(l) of the Act, 30 U.S.C. §932(l), which provides that the survivor of a miner who is determined to be eligible to receive benefits at the time of his or her death is automatically entitled to receive payment of survivor's benefits, without having to first establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l).

On February 17, 2011, the Director, Office of Workers' Compensation Programs (the Director), moved for a summary decision in this case, based on the recent amendments to the Act.² Employer responded, asserting that the challenges to Public Law No. 111-148 in the federal courts rendered its application premature, and urging the administrative law judge to adjudicate this case on its merits.

In a Summary Decision dated March 4, 2011, the administrative law judge rejected employer's arguments, granted the Director's motion for a summary decision, and awarded survivor's benefits pursuant to amended Section 932(l).

On appeal, employer requests that the award of benefits be vacated in light of the challenges to the constitutionality of Public Law No. 111-148. Employer contends that if the award is upheld, and Public Law No. 111-148 is ultimately found to be unconstitutional, there is no provision that would enable employer to recoup the benefits paid. Claimant and the Director respond, urging the Board to affirm the administrative law judge's award of benefits.

Director's Exhibit 2. At the time of his death, the miner was receiving federal black lung benefits pursuant to a final award on his lifetime claim. Director's Exhibit 1.

² The administrative law judge noted that, in his motion, the Director, Office of Workers' Compensation Programs (the Director), asserted that there is no genuine issue as to any material fact regarding claimant's entitlement to benefits. Summary Decision at 1. Specifically, the Director asserted that claimant is automatically entitled to survivor's benefits pursuant to amended Section 932(l), 30 U.S.C. §932(l), because her husband, the miner, was receiving benefits at the time of his death, she filed her survivor's claim after January 1, 2005, and her claim was still pending on March 23, 2010.

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).

The Board's circumscribed scope of review requires that the party challenging the Decision and Order below address that Decision and Order with specificity, identifying any errors made by the administrative law judge and citing evidence and legal authority that support these allegations. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). Uncontested findings of the administrative law judge will generally not be addressed by the Board. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Employer's sole contention on appeal is that the application of amended Section 932(l) is premature in this case, in light of the challenges in federal court to Public Law No. 111-148. Employer raises no allegations of error with respect to the administrative law judge's award of survivor's benefits pursuant to amended Section 932(l). Rather, employer concedes that claimant meets the eligibility requirements for entitlement to benefits pursuant to amended Section 932(l). Employer's Brief at 7. Consequently, we affirm the administrative law judge's decision awarding benefits on this claim under amended Section 932(l) of the Act. 30 U.S.C. §932(l); *see Skrack*, 6 BLR at 1-711. To the extent employer is requesting that this case be held in abeyance, employer's request is denied. *See Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-201 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011) (Order)(unpub.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011).

Accordingly, 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

JUDITH S. BOGGS
Administrative Appeals Judge