

BRB No. 11-0393 BLA

PAULINE E. SMOUSE )  
(Widow of JOSEPH T. SMOUSE) )  
 )  
 Claimant-Respondent )  
 )  
 v. )  
 )  
 MARSOLINO COOLSPRING QUARRY, )  
 INCORPORATED ) DATE ISSUED: 01/25/2012  
 )  
 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 Granting Motion for Summary Decision and Awarding Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Paul K. Paterson (Law Office of Mascelli & Paterson), Scranton, Pennsylvania, 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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Granting Motion for Summary Decision and Awarding Benefits (2010-BLA-5770) of Administrative Law Judge Thomas M.

Burke, rendered on a survivor's claim<sup>1</sup> 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. 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 January 14, 2001, claimant moved for a summary decision in this case, based on the recent amendments to the Act.<sup>2</sup> Employer responded, urging the administrative law judge to deny claimant's motion because Public Law No. 111-148 is unconstitutional and violates employer's due process rights.

In a Decision and Order dated February 2, 2011, the administrative law judge rejected employer's argument that Public Law No. 111-148 is unconstitutional and violates employer's due process rights, correctly noting that the Board has recently rejected substantially similar arguments. Decision and Order at 2, *citing 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). Accordingly, the administrative law judge granted claimant's motion for a summary decision, and awarded survivor's benefits pursuant to amended Section 932(l).

On appeal, employer requests that this case be held in abeyance pending the resolution of challenges to the constitutionality of Public Law No. 111-148. Employer contends that the case should be held in abeyance because employer does not have a realistic remedy if benefits are paid and Public Law No. 111-148 is ultimately found to be unconstitutional. Claimant has not filed a response brief. The Director, Office of

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<sup>1</sup> Claimant is the widow of the miner, who died on October 24, 2009. Director's Exhibit 10. Claimant filed her claim for survivor's benefits on January 19, 2010. 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.

<sup>2</sup> The administrative law judge noted that, in her motion, claimant asserted that she 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.

Workers' Compensation Programs (the Director), requests that the Board summarily affirm the award of benefits. The Director argues that employer fails to allege any error in the administrative law judge's award of benefits. The Director additionally urges the Board to reject employer's request to hold this case in abeyance.

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 Board should hold this case in abeyance pending resolution of the challenges 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).<sup>3</sup> 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. We deny employer's request to hold this case in abeyance. *See* *Mathews*, 24 BLR at 1-201.

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<sup>3</sup> Employer specifically states that "[i]t is not the purpose of the undersigned to argue the constitutionality of the Patient Protection and Affordable Care Act, the Director's interpretation of §1556, the constitutionality of the retroactive applications of the amendments to the Black Lung Act, etc." Employer's Brief at 3.

Accordingly, the administrative law judge's Decision and Order Granting Motion for Summary Decision and Awarding Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge