

BRB No. 10-0597 BLA

LOUISE MORRIS	)	
(Widow of PAUL MORRIS)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PITTSBURG & MIDWAY COAL MINING	)	DATE ISSUED: 06/13/2011
	)	
and	)	
	)	
TRAVELERS 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 of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

H. Brett Stonecipher (Ferreri & Fogle), Lexington, Kentucky, for employer/carrier.

Ann Marie Scarpino (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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2009-BLA-5638) of Administrative Law Judge Alice M. Craft awarding benefits on a claim 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). This case involves a survivor's claim filed on July 2, 2008.<sup>1</sup>

On March 12, 2010, the administrative law judge scheduled a hearing for July 14, 2010. However, on March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, were enacted. The amendments, in pertinent part, revive Section 932(l) of the Act, which provides that a 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.<sup>2</sup> 30 U.S.C. §932(l).

On April 2, 2010, the administrative law judge ordered the parties to show cause, within thirty days, why an order awarding survivor's benefits should not be entered. *See* 20 C.F.R. §725.452(d). Employer responded by arguing, *inter alia*, that Section 1556 of

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<sup>1</sup> Claimant is the surviving spouse of the miner, who died on June 7, 2008. Director's Exhibit 13. The miner filed a claim for benefits on July 8, 1987. On August 23, 1989, the district director determined that the miner was eligible to receive benefits.

<sup>2</sup> As it existed prior to March 23, 2010, Section 932(l) provided that:

In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this subchapter at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner, except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981, [*sic*].

30 U.S.C. §932(l). On March 23, 2010, Public Law No. 111-148 amended Section 422(l) as follows: "(b) Continuation of Benefits – Section 422(l) of the Black Lung Benefits Act (30 U.S.C. §932(l)) is amended by striking 'except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981'." Pub. L. No. 111-148, §1556(b), 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §932(l)). Section 1556 of Public Law No. 111-148 provides further that "[t]he amendments made by this section shall apply with respect to claims filed under part B or part C of the Black Lung Benefits Act (30 U.S.C. 921 et seq., 931 et seq.) after January 1, 2005, that are pending on or after the date of enactment of this Act." Pub. L. No. 111-148, §1556(c).

Public Law No. 111-148 violates its due process rights. Neither claimant nor the Director, Office of Workers' Compensation Programs (the Director), filed a response.

In a Decision and Order dated June 15, 2010, the administrative law judge noted that the miner was determined to be eligible to receive benefits at the time of his death, that claimant filed her survivor's claim on July 2, 2008, and that she is an eligible survivor of the miner. The administrative law judge, therefore, found that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's application of amended Section 932(l) to this case. The Director responds, urging affirmance of the administrative law judge's award of benefits. Claimant has not filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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 contends that the operative date for determining eligibility pursuant to amended Section 932(l) is the date that the miner's claim was filed, not the date that the survivor's claim was filed. Employer's Brief at 5. We disagree. The Board has held that the operative date for determining eligibility for survivors' 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.*, BLR , BRB No. 10-0113 BLA, slip op. at 7 (Dec. 22, 2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011).

Employer also argues that retroactive application of amended Section 932(l) is unconstitutional, because it violates employer's due process rights. The Board has rejected that argument, holding that the retroactive application of amended Section 932(l) does not violate the Fifth Amendment Due Process Clause. *Stacy*, slip op. at 8; *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.). We therefore reject employer's argument, for the reasons stated in *Mathews* and *Stacy*.

In this case, 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, we affirm the administrative law judge's determination that claimant is derivatively entitled to benefits pursuant to amended Section 932(l).

Finally, we deny employer's request that this case be remanded for a hearing. The administrative law judge properly determined, after notice to the parties and thirty days to respond, that a hearing was unnecessary, as claimant is entitled to benefits as a matter of law. *See* 20 C.F.R. §725.452(d); *Pukas v. Schuylkill Contracting Co.*, 22 BLR 1-69, 1-72 (2000).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge