

BRB No. 10-0617 BLA

MARY C. MOSS)	
(Widow of TERRY M. MOSS))	
)	
Claimant-Respondent)	
)	
v.)	
)	
BETTY B COAL COMPANY,)	DATE ISSUED: 06/07/2011
INCORPORATED)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Order Awarding Survivor's Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for employer.

Michelle S. Gerdano (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 Order Awarding Survivor's Benefits (2010-BLA-5120) of Administrative Law Judge Linda S. Chapman (the administrative law judge) rendered on

a 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. The amendments, in pertinent part, revive Section 422(l) of the Act, 30 U.S.C. §932(l), 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. 30 U.S.C. §932(l).

On March 31, 2010, the administrative law judge ordered the parties to show cause why benefits should not be awarded in the survivor's claim pursuant to amended Section 932(l). In response, the Director, Office of Workers' Compensation Programs (the Director), filed a motion for summary decision on May 12, 2010, asserting that no material issue of fact was contested in this claim, and that under amended Section 932(l), and given the filing date of her claim, claimant was automatically entitled to benefits based on the award to her deceased husband. Claimant, through her lay representative, similarly contended that she was automatically entitled to benefits under amended Section 932(l). Employer did not respond. The administrative law judge determined that employer did not raise the issues of relationship and dependency, and found that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 422(l), 30 U.S.C. §932(l). Accordingly, the administrative law judge awarded survivor's benefits.

On appeal, employer contends that the retroactive application of the automatic entitlement provisions of amended Section 932(l) to claims filed after January 1, 2005 is unconstitutional as a denial of due process and a taking of private property. Alternatively, employer argues that this case should be held in abeyance until regulations implementing the amendments have been promulgated and/or there is a resolution of the constitutional challenges pending in federal court. The Director responds, urging affirmance of the administrative law judge's award of benefits. Claimant has not filed a response brief.

¹ Claimant is the widow of the miner, who died on November 19, 2005. Director's Exhibit 9 at 2, 10. At the time of his death, the miner was receiving federal black lung benefits pursuant to an award issued on May 24, 1994, based on employer's agreement to pay benefits on the miner's lifetime claim, and implemented by a notification and Supplemental Order directing payment of benefits. Director's Exhibit 1 at 35, 39, 44. After the miner's death, claimant filed a claim for survivor's benefits on January 29, 2009. Director's Exhibit 3.

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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

We reject employer's arguments regarding the constitutionality of the amendments, as applied to this case. We agree with the Director that the arguments employer makes are essentially the ones that the Board rejected 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.). We, therefore, reject them here for the reasons set forth in *Mathews*. See also *Keene v. Consolidation Coal Co.*, F.3d , 2011 WL 1886106 (7th Cir. 2011); *Stacy v. Olga Coal Co.*, 24 BLR 1- , BRB No. 10-0113 BLA (Dec. 22, 2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011).

Further, consistent with *Mathews*, we deny employer's request that this case be held in abeyance until the Department of Labor issues guidelines or promulgates regulations implementing amended Section 932(l). As we noted in *Mathews*, the mandatory language of amended Section 932(l) supports the conclusion that the provision is self-executing, and, therefore, that there is no need to hold this case in abeyance pending the promulgation of new regulations. *Mathews*, 24 BLR at 1-201. Employer's request, that this case be held in abeyance pending resolution of the legal challenges to Public Law No. 111-148, is also denied. *Id.*; see *Fairman v. Helen Mining Co.*, BLR , BRB No. 10-0494 BLA (Apr. 29, 2011).

Because claimant, an eligible survivor of the miner, filed her 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 amended Section 422(l) of the Act, 30 U.S.C. §932(l).

Accordingly, the administrative law judge's Order Awarding Survivor's Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge