

BRB No. 10-0621 BLA

LOUISE HOPKINS)	
(Widow of WILLIAM L. HOPKINS))	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED: 06/15/2011
)	
U.S. STEEL CORPORATION)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Summary Decision and Order – Awarding Benefits of Robert B. Rae, Administrative Law Judge, United States Department of Labor.

Derrick W. Lefler (Gibson, Lefler & Associates), Princeton, West Virginia, for claimant.

Howard G. Salisbury, Jr. (Kay, Casto & Chaney PLLC), Charleston, West Virginia, for employer.

Helen H. Cox (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 Summary Decision and Order – Awarding Benefits (2010-BLA-05020) of Administrative Law Judge Robert B. Rae, rendered on a survivor's

claim,¹ filed on December 8, 2008, 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, affecting claims filed after January 1, 2005, were enacted. 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 May 18, 2010, the Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Summary Decision, asserting that, pursuant to amended Section 932(l), claimant was automatically entitled to benefits, as a matter of law, because the miner was receiving benefits at the time of his death, and that there was no genuine issue as to any material fact concerning her entitlement. Claimant joined in the Director's motion, similarly contending that she was automatically entitled to benefits under amended Section 932(l). Employer, however, argued that retroactive application of amended Section 932(l) is unconstitutional, in that it violates employer's due process rights and conflicts with other provisions of the Act.

The administrative law judge determined that the miner was awarded benefits by Administrative Law Judge John J. Forbes on December 21, 1988, and that the award became final on January 20, 1989. Summary Decision and Order at 2, *citing William L. Hopkins v. U.S.X. Corporation*, Case No. 87-BLA-3229 (Dec. 21, 1988). He further found that claimant is an eligible survivor of the miner, that she filed her survivor's claim on December 8, 2008, that it was filed on or after January 1, 2005, and was pending as of March 23, 2010, the date of enactment of Section 1556 of Public Law No. 111-148. Summary Decision and Order at 5. Thus, the administrative law judge determined that claimant satisfied the eligibility criteria for automatic entitlement pursuant to amended Section 932(l) and he awarded benefits. *Id.*

On appeal, employer argues that the retroactive application of the automatic entitlement provision of Section 932(l) to claims filed after January 1, 2005, constitutes a violation of its due process rights. Employer requests that this case be held in abeyance pending the outcome of litigation over the constitutionality of Public Law No. 111-148 in a lawsuit filed in the United States District Court for the Northern District of Florida. Additionally, employer argues that amended Section 932(l) is inconsistent with the stated purpose of the Act to provide benefits to surviving dependents of miners in cases where

¹ Claimant is the widow of the miner, who died on November 14, 2008. Director's Exhibit 7.

the miner's death was due to pneumoconiosis. Claimant and the Director respond, urging affirmance of the award of benefits. Employer has also filed a reply brief, asserting that the operative date for determining eligibility for survivor's benefits pursuant to amended Section 932(l) is the date on which the miner's claim was filed, not the date of filing of the survivor's claim.

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.² 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).

After consideration of the arguments on appeal and the administrative law judge's decision, we hold that the allegations of error raised by employer regarding the applicability of amended Section 932(l) are without merit. First, employer's argument, that the retroactive application of Section 932(l) represents an unconstitutional taking, is identical to the argument 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) (unpub. Order). Employer's Brief in Support of Petition for Review at 5. We, therefore, reject the argument here for the reason set forth in that case. *Mathews*, 24 BLR at 1-198-200; *see also Stacy v. Olga Coal Co.*, 24 BLR 1-207, 1-214 (2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011).

We further reject employer's assertion that the newly amended Section 931(l) simply eliminates the need for eligible survivors to file a new claim for benefits, but does not, in and of itself, create an automatic entitlement to benefits. Employer's Brief in Support of Petition for Review at 6-7. The Board specifically held in *Mathews* that, under amended Section 931(l), 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. *Mathews*, 24 BLR at 1-198-200; *see Stacy*, 24 BLR at 1-213.

There is also no merit to employer's argument that amended Section 932(l) is rendered unenforceable by language in Sections 411(a) and 412(a)(2) of the Act, 30 U.S.C. §§921(a), 922(a)(2). Employer's Brief in Support of Petition for Review at 7-8. Those two sections provide, in relevant part, that benefits are to be paid at the applicable rate to a survivor where a miner was totally disabled due to pneumoconiosis at the time of his death, "except with respect to a claim filed under part C of this subchapter on or after

² This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 3.

the effective date of the Black Lung Benefits Amendments of 1981. . . .” 30 U.S.C. §§921(a), 922(a)(2). Contrary to employer’s assertion, Section 932(l), as amended, is not rendered inapplicable by the language in Sections 921(a) and 922(a)(2). In Section 1556, Congress specifically amended Section 932(l) by striking its former language stating that the provision could not apply to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, and mandated that the amendment “*shall apply* with respect to claims,” such as this one, “filed under . . . Part C . . . after January 1, 2005, that are pending on or after the date of enactment of this Act.” Pub. L. No. 111-148, §1556(c), 124 Stat. 119 (2010)(emphasis added). Thus, survivors’ claims filed after January 1, 2005, in which the survivor has derivative entitlement, are not subject to the language that employer highlights in 30 U.S.C. §§921(a), 922(a)(2), to the extent that it is inconsistent with amended Section 932(l).

In addition, the Board recently rejected contentions identical to those raised by employer regarding the relevant filing date under amended Section 932(l). *See Stacy*, 24 BLR at 1-211-213. The Board 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. *Id.* The Board specifically held that, under amended Section 932(l), an eligible survivor who files a claim after January 1, 2005, that is pending on or after the March 23, 2010 effective date of the Section 1556 amendment, is entitled to benefits based solely on the miner’s lifetime award, without having to prove that the miner died due to pneumoconiosis. *Id.*; *see* 30 U.S.C. §932(l).

Furthermore, as we noted in *Mathews*, the mandatory language of amended Section 932(l) supports the conclusion that the provision is self-executing. Therefore, 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. We, therefore, affirm the administrative law judge’s finding that claimant is derivatively entitled to benefits pursuant to amended Section 422(l) of the Act, 30 U.S.C. §932(l).³ Because amended Section 932(l) does not afford employer the opportunity to

³ We affirm, as unchallenged by the parties on appeal, the administrative law judge’s findings that claimant filed her survivor’s claim after January 1, 2005, that it was pending on March 23, 2010, and that the miner was receiving benefits at the time of his death, based on his lifetime claim. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

defend the claim, once derivative entitlement has been established, employer's request that the case be remanded for hearing and a decision on the merits of whether the miner's death was due to pneumoconiosis is denied. *Id.*

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge