

BRB No. 10-0639 BLA

INEZ D. BENTLEY )  
(Widow of WILLIAM BENTLEY) )  
 )  
Claimant-Respondent )  
 )  
v. )  
 )  
TORIE MINING, INCORPORATED )  
 )  
and )  
 )  
AMERICAN INTERNATIONAL )  
COMPANIES, c/o AIG CLAIMS SERVICES ) DATE ISSUED: 06/14/2011  
 )  
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 Awarding Benefits of John P. Sellers, III,  
Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts (William Lawrence Roberts, P.S.C.), Pikeville,  
Kentucky, for claimant.

Timothy J. Walker (Ferrerri & Fogle), Lexington, Kentucky, for employer  
and 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, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer and carrier (“employer”) appeal the Decision and Order Awarding Benefits (2010-BLA-5365) of Administrative Law Judge John P. Sellers, III, 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 422(l) of the Act, 30 U.S.C. §932(l), which provides that the 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).

By Order dated June 11, 2010, the administrative law judge advised the parties of the applicability of the amendments to this claim, and issued an order directing employer to show cause why an order awarding benefits should not be entered. In response, the Director, Office of Workers’ Compensation Programs, filed a Motion for Summary Decision, asserting that there is no genuine issue of material fact concerning claimant’s entitlement to benefits under amended Section 422(l), and that given the filing date of her claim, claimant was entitled to benefits based on the award to her deceased husband. Claimant agreed, asserting that she satisfied the eligibility criteria for automatic entitlement pursuant to amended Section 422(l). Employer responded, arguing that Section 1556 of Public Law No. 111-148 is unconstitutional; that the operative date for determining eligibility for survivor’s benefits is the date the miner’s claim was filed; and that issues of fact and law existed as to the cause of the miner’s death.

On July 6, 2010, the administrative law judge rejected employer’s interpretation of the statute; determined that the cause of the miner’s death was not a material issue under amended Section 422(l); and granted fifteen days for the parties to submit any objections

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<sup>1</sup> Claimant is the widow of the miner, who died on November 30, 2008. Director’s Exhibits 10, 12. On April 29, 2003, the Board affirmed an award of benefits by Administrative Law Judge Thomas Phalen in the living miner’s claim. On October 9, 2008, Administrative Law Judge Daniel F. Solomon denied modification of that award, and no further action was taken. After the miner’s death, claimant filed a claim for survivor’s benefits on December 24, 2008. Director’s Exhibit 2.

to the summary disposition of the case. After receiving no objections,<sup>2</sup> the administrative law judge issued his Decision and Order on July 26, 2010, finding that claimant is an eligible survivor of a miner who was receiving benefits at the time of his death; that claimant filed her survivor's claim after January 1, 2005; and that her claim was pending on or after March 23, 2010. Accordingly, the administrative law judge found that claimant was automatically entitled to survivor's benefits pursuant to amended Section 422(l) of the Act, 30 U.S.C. §932(l).

On appeal, employer contends that the operative date for determining eligibility for survivor's benefits pursuant to amended Section 422(l) is the date the miner's claim was filed, not the date the survivor's claim was filed. Employer asserts, therefore, that the administrative law judge's application of amended Section 422(l) to the survivor's claim is irrational; not in accordance with prior law or Congressional intent; and constitutes a violation of employer's due process rights.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The Board has recently held that the operative date for determining eligibility for survivor's benefits under amended Section 422(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.*, 24 BLR 1-207 (2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011). For the reasons set forth in *Stacy*, we reject employer's arguments to the contrary. We further reject employer's contention that application of the automatic entitlement provisions of amended Section 422(l) to survivor's claims filed after January 1, 2005, constitutes a violation of its due process rights, for the same reasons the Board rejected identical arguments in *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-93, 1-200 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011)(Order)(unpub.); *see also Keene v. Consolidation Coal Co.*, F.3d , 2011 WL 1886106 (7th Cir. 2011).

Because claimant filed her survivor's 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 entitled to receive survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l).

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<sup>2</sup> The administrative law judge noted that employer's constitutional arguments would be preserved for the purposes of further appeal. Decision and Order at 3.

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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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge