

BRB No. 10-0665 BLA

OLIA K. HYLTON )  
(Widow of WILLIAM H. HYLTON) )  
 )  
Claimant-Respondent )  
 )  
v. )  
 )  
SLAB FORK COAL COMPANY ) DATE ISSUED: 06/29/2011  
 )  
and )  
 )  
WEST VIRGINIA COAL WORKERS' )  
PNEUMOCONIOSIS FUND )  
 )  
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 Daniel L. Leland,  
Administrative Law Judge, United States Department of Labor.

Francesca Tan (Jackson Kelly PLLC), Morgantown, West Virginia, for  
employer/carrier.

Paul L. Edenfield (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/carrier (employer) appeals the Decision and Order - Awarding Benefits (2009-BLA-5859) of Administrative Law Judge Daniel L. Leland rendered on a survivor's 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). The survivor's claim was filed on October 27, 2008.<sup>1</sup>

On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, were enacted. Those amendments, in pertinent part, revived 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).

By Order dated March 31, 2010, the administrative law judge issued an Order of Continuance,<sup>2</sup> cancelling the scheduled hearing and continuing it to a date, time and place to be thereafter fixed. Subsequently, on June 15, 2010, the Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Summary Decision, asserting that pursuant to the amended Section 932(l), claimant is automatically entitled to benefits. Employer responded, arguing that the case is not ripe for adjudication, but should be held in abeyance until sixty days after the Department of Labor issues guidelines or promulgates regulations implementing the amendments. In the alternative, employer contends that the case should proceed to a formal hearing to allow employer the opportunity to cross-examine claimant regarding her eligibility as the miner's survivor.

In his Decision and Order – Awarding Benefits dated July 23 2010, the administrative law judge noted that the miner was receiving benefits at the time of his death pursuant to the district director's award of benefits dated April 10, 1995. Decision

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<sup>1</sup> Claimant is the widow of the miner who died on October 8, 2008. Director's Exhibit 10. At the time of his death the miner was receiving federal black lung benefits pursuant to a final award on his lifetime claim. Decision and Order – Awarding Benefits at 1.

<sup>2</sup> On March 29, 2010, in light of the recent amendments to the Act, employer submitted a Motion for Continuance, requesting that the hearing scheduled for April 6, 2010 be continued until further clarification on the new law and implementing regulations are issued, and thus, allowing the parties time to respond to the changes in the applicable law.

and Order at 1. The administrative law judge also noted that claimant filed her survivor's claim after January 1, 2005, Director's Exhibit 2, the claim was pending on March 23, 2010, and there was no dispute that claimant was an eligible survivor of the miner. Decision and Order at 2. The administrative law judge, therefore, found that claimant met the eligibility criteria for automatic entitlement to benefits under amended Section 932(l). Accordingly, the administrative law judge awarded survivor's benefits under amended Section 932(l).

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 did not file a response to employer's appeal.

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.<sup>3</sup> 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 5-15. Employer also asserts that this case should be held in abeyance until sixty days after the Department of Labor issues guidelines or promulgates regulations implementing 30 U.S.C. §932(l), as amended, and made applicable by Section 1556 of Public Law No. 111-148. Employer's Brief at 16-18. Employer also argues that, because the constitutionality of Public Law No. 111-148 was challenged in a lawsuit filed in the United States District Court for the Northern District of Florida, this case should be held in abeyance. Employer's Brief at 18-19. Further, employer asserts that retroactive application of amended Section 932(l) is unconstitutional, as it violates employer's due process rights and constitutes an unlawful taking of employer's property, in violation of the Fifth Amendment to the United States Constitution. Employer's Brief at 20-27. Employer also contends that the administrative law judge's issuance of a decision in this matter, without holding an administrative hearing, as requested by employer, constituted a denial of due process. Employer's Brief at 28. We disagree.

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<sup>3</sup> The record indicates that the miner's last coal mine employment was in West Virginia. Director's Exhibit 3. Accordingly, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe Director, OWCP*, 12 BLR 1-200, 1-202 (1989).

As the administrative law judge correctly noted, the recent amendment to the Act reviving Section 422(l), 30 U.S.C. §932(l), applies to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Pub. Law. No. 111-148, §1556(c). In a recent case, 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. *Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011). Specifically, the Board 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 Section 1556, is entitled to benefits, based solely on the miner's lifetime award, without having to prove that the miner died due to pneumoconiosis. *Stacy*, 24 BLR at 1-213; *see* 30 U.S.C. §932(l). Because claimant filed her survivor's claim after January 1, 2005, her claim was pending on March 23, 2010, and the miner was awarded benefits on his claim, we reject employer's contention and hold that the administrative law judge properly found that amended Section 932(l) applies to this case. *Stacy*, 24 BLR at 1-213; Decision and Order at 1.

We also reject employer's arguments regarding the constitutionality of amended Section 932(l), as applied to this case. The arguments employer makes are identical to 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.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011). We, therefore, reject them here for the reasons set forth in that case. *Mathews*, 24 BLR at 1-198-200; *see also Stacy*, 24 BLR at 1-214. Further, as we did in *Mathews*, we reject employer's request that this case be held in abeyance until sixty days after 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. Finally, employer's request, that this case be held in abeyance pending resolution of the legal challenge to Public Law No. 111-148, is also denied. *See Stacy*, 24 BLR at 1-214-15; *Mathews*, 24 BLR at 1-201; *Fairman v. Helen Mining Co.*, BLR , BRB No. 10-0494 BLA (Apr. 29, 2011).

Finally, we reject employer's assertion that the administrative law judge's disposition of this matter without holding an administrative hearing was a deprivation of due process. Contrary to employer's argument, the administrative law judge was not required to provide employer with a hearing after the amendments to the Act were enacted on March 23, 2010. The Act and regulations mandate that an administrative law judge hold a hearing on any claim whenever a party requests such a hearing, unless such hearing is waived by the parties or a party requests summary judgment pursuant to 20 C.F.R. §725.452. *Pukas v. Schuylkill Contracting Co.*, 22 BLR 1-69, 1-72 (2000)

*Fairman*, slip op. at 4-5. In this case, the Director moved for summary judgment, arguing that there was no genuine issue of material fact concerning claimant's entitlement to benefits under amended Section 932(l), and the administrative law judge provided employer the opportunity to respond to the motion for summary judgment prior to the decision. *See* 20 C.F.R. §725.452(c). The administrative law judge rationally determined that, in light of the applicability of amended Section 932(l), there was no genuine issue of material fact concerning claimant's entitlement to benefits and, thus, no hearing was required.<sup>4</sup> *See Fairman*, slip op. at 5; *Pukas*, 22 BLR at 1-72.

Consequently, we affirm the administrative law judge's determination that claimant is derivatively entitled to benefits pursuant to amended Section 422(l), 30 U.S.C. §932(l), as she filed her survivor's claim after January 1, 2005, the claim was pending on March 23, 2010, and the miner was determined to be eligible to receive benefits at the time of his death.

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<sup>4</sup> Employer does not dispute that claimant filed her survivor's claim after January 1, 2005, 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. Employer does not allege that there are any issues of fact regarding claimant's eligibility in this case, but rather, argues only that litigants "must be permitted to present or defend their case by oral or documentary evidence and to conduct cross-examination as may be required for full disclosure of the facts." Employer's Brief at 28. Because employer has not alleged that there are any issues of fact to be resolved regarding claimant's eligibility, the administrative law judge was not required to provide employer with a hearing. *See generally Goodman v. Goodman*, 62 A.D.2d 939, 940, 404 N.Y.S.2d 3, 4 (N.Y.A.D. 1978)("A party in opposition to a motion for summary judgment must assemble and lay bare his proof to establish affirmatively the existence of genuine triable issues of fact.").



Accordingly, the administrative law judge's Decision and Order – 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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BETTY JEAN HALL  
Administrative Appeals Judge