

BRB No. 11-0704 BLA

LUCILLE MCCOY COLEMAN)
(Widow of TROY COLEMAN))
)
 Claimant-Respondent)
)
 v.)
)
 VIRGINIA CREWS COAL COMPANY) DATE ISSUED: 06/25/2012
)
 Employer-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Summary Decision Awarding Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Douglas A. Smoot (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Summary Decision Awarding Benefits (2011-BLA-5853) of Administrative Law Judge Michael P. Lesniak, rendered on a survivor's claim¹ filed

¹ Claimant is the widow of the miner, Troy Coleman, who died on February 1, 2011. Director's Exhibit 8. At the time of his death, the miner was receiving federal

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, contained in the Patient Protection and Affordable Care Act (PPACA), were passed, which affect claims filed after January 1, 2005 that were pending on or after March 23, 2010. *See* Section 1556 of the PPACA, Public Law No. 111-148 (2010). In pertinent part, the amendments revive Section 422(l) of the Act, 30 U.S.C. §932(l), providing 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. *See* 30 U.S.C. §932(l).

Claimant filed her claim for survivor's benefits on March 7, 2011. Director's Exhibit 4. In a Proposed Decision and Order, dated March 9, 2011, the district director determined that claimant is an eligible survivor of a miner who was receiving benefits at the time of his death, and therefore, is derivatively entitled to survivor's benefits under amended Section 932(l). Director's Exhibit 10. Employer requested a hearing and the case was transferred to the Office of Administrative Law Judges. Director's Exhibit 11.

On June 17, 2011, 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, and that there was no genuine issue as to any material fact concerning her entitlement. Employer responded, arguing that amended Section 932(l) should not be applied, and requesting that the Director's motion be denied.

On July 8, 2011, the administrative law judge issued a Summary Decision Awarding Benefits, finding that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l), and awarding benefits commencing on February 1, 2011, the first day of the month in which the miner died.

On appeal, employer challenges the constitutionality of amended Section 932(l), and its application to this survivor's claim. Employer requests that the Board hold this case in abeyance, pending resolution of the constitutional challenges to the PPACA and review by the United States Court of Appeals for the Fourth Circuit of the Board's

black lung benefits pursuant to an award on his lifetime claim, issued on August 20, 1992. Director's Exhibit 2.

decision in *Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010).² Employer further argues that the operative date for determining eligibility for survivor's benefits under amended Section 932(l) is the date that the miner's claim was filed, not the date that the survivor's claim was filed.

The Director responds, urging the Board to reject employer's arguments regarding the constitutionality of amended Section 932(l) and its application to this claim. The Director contends that the award of benefits should be affirmed. Claimant has not filed a response brief.

The Board's scope of review is defined by statute. The administrative law judge's decision must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.³ 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).

Initially, we reject employer's argument that, if any portion of the PPACA is declared unconstitutional, amended Section 932(l) must also be declared invalid. *See West Virginia CWP Fund v. Stacy*, 671 F.3d 378, 383 n.2, 25 BLR 2-69, 2-74 n.2 (4th Cir. 2011), *aff'g Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010). Moreover, for the reasons set forth in *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-201 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011) (Order) (unpub.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011), we decline to hold this case in abeyance, pending resolution of the legal challenges to the PPACA.

We also reject employer's contention that retroactive application of the automatic entitlement provision of amended Section 932(l), to claims filed after January 1, 2005, constitutes a due process violation. *See Stacy*, 671 F.3d at 383-86, 25 BLR at 2-74-79; *see also B&G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 25 BLR 2-16 (3d Cir. 2011); *Keene v. Consolidation Coal Co.*, 645 F.3d 844, 24 BLR 2-385 (7th Cir. 2011). Further, we deny employer's request that we remand this case to the administrative law judge for development of evidence regarding the economic impact of the amendments, in order to establish that an unconstitutional taking has occurred. *See*

² Subsequent to the briefing in this case, the United States Court of Appeals for the Fourth Circuit affirmed the Board's decision. *See W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 25 BLR 2-69 (4th Cir. 2011), *aff'g Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010).

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

Stacy, 671 F.3d at 387, 25 BLR at 2-80 (holding that “. . . the mere imposition of an obligation to pay money does not give rise to a claim under the Takings Clause”).

Finally, there is no merit to employer’s assertion that amended Section 932(l) is not applicable, based on the filing date of the miner’s claim. The Fourth Circuit has affirmed the Board’s holding that the operative date for determining eligibility for survivor’s 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. *See Stacy*, 671 F.3d at 388-89, 25 BLR at 2-83-84.

Because claimant filed her survivor’s claim after January 1, 2005, her claim was pending on or after 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).

Accordingly, the administrative law judge’s Summary Decision Awarding Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge