

BRB No. 10-0469 BLA

PATRICIA A. GASTON)	
(Widow of JOSEPH P. GASTON))	
)	
Claimant-Respondent)	
)	
v.)	
)	
PENNSYLVANIA MINES CORPORATION)	
)	DATE ISSUED: 03/02/2011
Employer-Petitioner)	
)	
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 Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose, LLC), Johnstown, Pennsylvania, for employer.

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 appeals the Decision and Order Awarding Benefits (07-BLA-5880) of Administrative Law Judge Thomas M. Burke, rendered on a survivor's 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). Noting the applicability of the March 23, 2010 amendments to the Act,² the administrative law judge found that claimant is derivatively entitled to survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l), amended by Public Law No. 111-148, Section 1556(b), as her claim was filed after January 1, 2005, the claim was pending on March 23, 2010, and the miner was receiving benefits at the time of his death. Accordingly, the administrative law judge awarded benefits.

On appeal, employer requests that this case be held in abeyance pending the resolution of challenges to the constitutionality of Public Law No. 111-148. Employer contends that the case should be held in abeyance because there will be no way for employer to recoup improperly paid benefits in the event that Public Law No. 111-148 is ultimately found to be unconstitutional. Claimant responds, urging the Board to affirm the award and to reject employer's request to hold this case in abeyance. In response, the Director, Office of Workers' Compensation Programs (the Director), moves for summary affirmance of the award of benefits. The Director argues that employer does not challenge the award of benefits. The Director additionally urges the Board to reject employer's request to hold this case in abeyance. In reply, employer reiterates its request that this case be held in abeyance.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359, 363 (1965).

¹ Claimant is the widow of the miner, who died on July 4, 2006. Director's Exhibit 10. Claimant filed her claim for survivor's benefits on August 1, 2006. Director's Exhibit 3. At the time of his death, the miner was receiving federal black lung benefits pursuant to a final award on his lifetime claim.

² On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, that were pending on March 23, 2010, 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 determined to be 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).

The Board's circumscribed scope of review requires that the party challenging the Decision and Order below address that Decision and Order with specificity, identifying any errors made by the administrative law judge and citing evidence and legal authority that support these allegations. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). Uncontested findings of the administrative law judge will generally not be addressed by the Board. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Here, other than requesting that the Board hold this case in abeyance pending resolution of the challenges to other provisions of Public Law No. 111-148, employer does not challenge the administrative law judge's determination that claimant is derivatively entitled to survivor's benefits. Consequently, we affirm the administrative law judge's decision awarding benefits on this claim under Section 422(l) of the Act. 30 U.S.C. §932(l); *see Skrack*, 6 BLR at 1-711. We deny employer's request to hold this case in abeyance.

Accordingly, the Director's Motion for Summary Affirmance is granted, and the administrative law judge's Decision and Order 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