

BRB No. 11-0415 BLA

FRANCES A. WEBB)	
(Widow of RALPH D. WEBB))	
)	
Claimant-Respondent)	
)	
v.)	
)	
CONSOLIDATION COAL COMPANY)	DATE ISSUED: 03/05/2012
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Order Awarding Survivor's Benefits of William S. Colwell, Associate Chief Administrative Law Judge, United States Department of Labor.

George E. Roeder, III (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Jonathan Rolfe (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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Order Awarding Survivor's Benefits (11-BLA-5177) of Associate Chief Administrative Law Judge William S. Colwell (the administrative law judge) 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).

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. *See* Section 1556 of the Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148 (2010). The amendments, in pertinent part, revive Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides that an eligible 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*).

On January 11, 2011, the Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Summary Decision, asserting that claimant¹ is automatically entitled to benefits under amended Section 932(*l*). Employer opposed the motion, and the Director filed a reply. Claimant did not respond.

In an Order Awarding Survivor's Benefits issued on March 2, 2011, the administrative law judge found, *inter alia*, that employer does not dispute that claimant is the eligible survivor of the miner, who was receiving benefits at the time of his death, and that claimant met the eligibility requirements for application of amended Section 932(*l*). As the survivor's claim for benefits was filed after January 1, 2005, and was pending after March 23, 2010, the effective date of the amendments, the administrative law judge agreed with the Director that claimant is derivatively entitled to survivor's benefits under the PPACA.

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 survivor's benefits.

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

¹ Claimant is the widow of the miner, who died on April 3, 2010. Director's Exhibit 10. At the time of his death, the miner was receiving federal black lung benefits pursuant to an order of remand for the payment of benefits entered upon employer's withdrawal of its controversion of the miner's lifetime claim, that became final in August, 2000. Decision and Order at 1; Director's Exhibit 1 at 37. Claimant filed her claim for survivor's benefits on April 22, 2010. Director's Exhibit 2.

Employer asserts that the retroactive application of amended Section 932(l) to this claim constitutes a violation of its due process rights and an unconstitutional taking of private property, in violation of the Fifth Amendment to the United States Constitution. Employer also 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. Further, employer asserts that this case should be held in abeyance pending resolution of the constitutional challenges to the PPACA in federal court.

We 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 and a taking of private property, for the same reasons the Board rejected substantially similar arguments in *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-200 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011)(Order)(unpub.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011). *See also B & G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, BLR (3d Cir. 2011); *Keene v. Consolidation Coal Co.*, 645 F.3d 844, 24 BLR 2-385 (7th Cir. 2011). Further, 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. *West Virginia CWP Fund v. Stacy*, F.3d , BLR , No. 11-1020, 2011 WL 6396510 (4th Cir. Dec. 21, 2011). For the reasons set forth in *Stacy*, we reject employer's arguments to the contrary and, consistent with our reasoning in *Mathews*, we reject employer's request to hold this case in abeyance pending resolution of legal challenges to the PPACA. *See also Keene*, 645 F.3d 844, 24 BLR 2-385; *Fairman v. Helen Mining Co.*, 24 BLR 1-225 (2011), *appeal docketed*, No. 11-2445 (3d Cir. May 31, 2011).

Because claimant filed her survivor's claim after January 1, 2005, her claim was pending 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 derivatively entitled to receive survivor's benefits pursuant to amended Section 422(l) of the Act, 30 U.S.C. §932(l).

Accordingly, the administrative law judge's Order Awarding Survivor's Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge