

BRB No. 10-0557 BLA

LEAH HAGERMAN)	
)	
Claimant-Respondent)	
)	
v.)	
)	
SEA "B" MINING COMPANY)	
)	DATE ISSUED: 05/24/2011
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 of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Anne Megan Davis (Johnson, Jones, Snelling, Gilbert & Davis, P.C.), Chicago, Illinois, for claimant.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Michelle S. Gerdano (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 (09-BLA-5095) of Administrative Law Judge Alice M. Craft awarding benefits on a 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). This case involves a survivor's claim filed on October 20, 2008.¹

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).

On March 31, 2010, before the scheduled hearing, claimant moved for a summary decision. Claimant argued that, because her deceased husband was receiving benefits at the time of his death, she was automatically entitled to benefits as a matter of law pursuant to amended Section 932(l), and that there was no genuine issue as to any material fact concerning her entitlement. The Director, Office of Workers' Compensation Programs (the Director), responded that claimant is automatically entitled to benefits under amended Section 422(l), 30 U.S.C. §932(l). Employer responded that the case should be held in abeyance until federal lawsuits challenging the constitutionality of Public Law No. 111-148 are resolved.

In a Decision and Order dated May 25, 2010, the administrative law judge found that claimant met the eligibility criteria for automatic entitlement to benefits under amended Section 932(l). Further, the administrative law judge found no justification for holding the case in abeyance. Accordingly, the administrative law judge awarded survivor's benefits pursuant to amended Section 932(l), and canceled the hearing. Decision and Order at 4-5.

On appeal, employer challenges the administrative law judge's application of amended Section 932(l) to this case. Claimant and the Director respond, urging affirmation of the administrative law judge's award of 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹ Claimant is the widow of the miner, who died on October 1, 2007. Director's Exhibit 4. At the time of his death, the miner was receiving federal black lung benefits pursuant to a final award on his lifetime claim. *Hagerman v. Sea "B" Mining Co.*, BRB No. 94-0766 BLA (Oct. 27, 1995) (unpub.).

Employer asserts that the 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. Employer's Brief at 3-11. 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. Employer's Brief at 13. Further, employer asserts that this case should be held in abeyance until the Department of Labor (DOL) 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 12. 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 14. Employer's arguments lack merit.

As the administrative law judge correctly noted, the recent amendment reviving Section 422(l) of the Act, 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.*, BLR , BRB No. 10-0113 BLA, slip op. at 7 (Dec. 22, 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 the Section 1556 amendments, is entitled to benefits based solely on the miner's lifetime award, without having to prove that the miner died due to pneumoconiosis. *Stacy*, slip op. at 7; *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, the administrative law judge properly found that Section 932(l) applies to this case. *Stacy*, slip op. at 7.

We also reject employer's arguments regarding the constitutionality of the amendments, 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.). We, therefore, reject them here for the reasons set forth in that case. *Mathews*, 24 BLR at 1-198-200; *see also Stacy*, slip op. at 8.

Further, as we did in *Mathews*, we reject employer's request that this case be held in abeyance until after DOL 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. Additionally, we deny employer's request that

this case be held in abeyance pending resolution of the legal challenge to Public Law No. 111-148. *See Mathews*, 24 BLR at 1-201.

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. We also affirm the administrative law judge's determination to cancel the hearing. Decision and Order at 5. The Act and regulations mandate that an administrative law judge hold a hearing on any claim, including a request for modification filed with the district director, 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. §725.452.² *Pukas v. Schuylkill Contracting Co.*, 22 BLR 1-69, 1-72 (2000). Here, claimant moved for summary judgment, and the administrative law judge properly determined that claimant is entitled to benefits as a matter of law. *See* 20 C.F.R. §725.452(c). Thus, the administrative law judge did not err when she canceled the hearing. *See Pukas*, 22 BLR at 1-72.

² Section 725.452(c) provides:

A full evidentiary hearing need not be conducted if a party moves for summary judgment and the administrative law judge determines that there is no genuine issue as to any material fact and that the moving party is entitled to the relief requested as a matter of law. All parties shall be entitled to respond to the motion for summary judgment prior to decision thereon.

Accordingly, 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