

BRB No. 10-0575 BLA

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|-------------------------------|---|-------------------------|
| SHELBY COLEMAN                | ) |                         |
| (Widow of LEONARD COLEMAN)    | ) |                         |
|                               | ) |                         |
| Claimant-Respondent           | ) |                         |
|                               | ) |                         |
| v.                            | ) |                         |
|                               | ) |                         |
| HAWLEY COAL MINING            | ) | DATE ISSUED: 05/17/2011 |
| CORPORATION                   | ) |                         |
|                               | ) |                         |
| 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 Order Awarding Survivor's Benefits of William S. Colwell, Associate Chief Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe, Williams, Rutherford & Reynolds), Norton, Virginia, for claimant.

Kathy L. Snyder and Wendy G. Adkins (Jackson Kelly PLLC), Morgantown, West Virginia, for carrier.

Sarah M. Hurley (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:

Carrier appeals the Order Awarding Survivor's Benefits (2010-BLA-05017) of Associate Chief Administrative Law Judge William S. Colwell (the administrative law judge) 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).<sup>1</sup>

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. The amendments, in pertinent part, revive Section 422(l) of the Act, 30 U.S.C. §932(l), which provides 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. 30 U.S.C. §932(l).

On April 26, 2010, the administrative law judge advised the parties of the possible applicability of the amendments to this claim, and issued an order directing the parties to submit position statements. In response, claimant<sup>2</sup> asserted that she was automatically entitled to benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a motion for summary decision, agreeing with claimant that, under amended Section 932(l), and given the filing date of her claim, claimant was entitled to benefits based on the award to her deceased husband. Carrier responded, arguing that application of amended Section 932(l) would violate its due process rights, and requesting that the case be held in abeyance pending promulgation of implementing

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<sup>1</sup> The recent amendments to the Act apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Pub. L. No. 111-148, §1556(c), 124 Stat. 119 (2010). Section 1556 of Public Law No. 111-148 amended Section 422 (l) of the Act, to provide that a qualified survivor is automatically entitled to benefits without having to establish that the miner's death was due to pneumoconiosis, if the miner filed a successful claim and was receiving benefits at the time of his death. 30 U.S.C. §932(l), amended by Pub. L. No. 111-148, §1556(c), 124 Stat. 119 (2010)(to be codified at 30 U.S.C. §932(l)).

<sup>2</sup> Claimant is the widow of the miner, who was receiving federal black lung benefits at the time of his death pursuant to a final award issued on December 17, 1984. Employer's Exhibit 9. The miner died on June 7, 2005, and claimant filed a claim for survivor's benefits on July 1, 2005. Director's Exhibits 2, 8.

regulations. The administrative law judge determined that claimant met the eligibility requirements for application of amended Section 932(l), and that carrier did not raise the issues of relationship and dependency as genuine issues of material fact in its position statement. Consequently, the administrative law judge granted the Director's motion for summary decision, and awarded survivor's benefits.

On appeal, carrier challenges the administrative law judge's application of amended Section 932(l) to this case. Alternatively, carrier requests that this case be held in abeyance pending promulgation of implementing regulations and resolution of the legal challenges to Public Law No. 111-148 in federal court. The Director and claimant respond, urging affirmance of the administrative law judge's award of benefits.

The Board's scope of review is defined by statute. The administrative law judge's 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).

Carrier asserts that the operative date for determining eligibility pursuant to amended Section 932(l) is the date of filing of the miner's claim, and not the filing date of the survivor's claim. Carrier maintains that the Director's contrary position is not entitled to deference because it is inconsistent with the plain language of the statute, the regulations, and with prior interpretations by the Director of Section 932(l). Carrier's Brief at 5-14; Carrier's Reply Brief at 2-12. Carrier further contends that retroactive application of the amended Section 932(l) is unconstitutional as a denial of due process and a taking of private property. Carrier's Brief at 14-21. Carrier's contentions are without merit.

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). For the reasons set forth in *Stacy*, we reject carrier's arguments to the contrary.

We also reject carrier's contention that retroactive application of the automatic entitlement provisions 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 identical 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.). Further, as we did in *Mathews*, we reject carrier's request that this case be held in abeyance pending either promulgation of implementing regulations or resolution of the

legal challenges to Public Law No. 111-148. *See Mathews*, 24 BLR at 1-201; *Fairman v. Helen Mining Co.*, BLR , BRB No. 10-0494 BLA (Apr. 29, 2011).

Because claimant filed her survivor's claim after January 1, 2005, her claim was pending on 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 survivor's benefits pursuant to 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.

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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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JUDITH S. BOGGS  
Administrative Appeals Judge