

BRB No. 12-0046 BLA

DOROTHY J. HRUBOCHAK)	
(Widow of MICHAEL S. HRUBOCHAK))	
)	
Claimant-Respondent)	
)	
v.)	
)	
BARNES & TUCKER COMPANY)	DATE ISSUED: 10/15/2012
)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

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

Emily Goldberg-Kraft (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 (11-BLA-6055) of Administrative Law Judge Richard A. Morgan awarding benefits on a survivor's claim¹ filed pursuant to the

¹ Claimant is the widow of the miner, who died on July 27, 2004. Director's

Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act).

On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, were enacted. Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (codified at 30 U.S.C. §§921(c)(4) and 932(l)). 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 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.

Claimant filed her survivor's claim filed on July 14, 2010. Director's Exhibit 3. On August 2, 2010, the district director issued a Proposed Decision and Order, wherein she found that claimant was derivatively entitled to benefits pursuant to amended Section 932(l). Director's Exhibit 8. At employer's request, the case was forwarded to the Office of Administrative Law Judges for a formal hearing.

On August 25, 2011, the Director, Office of Workers' Compensation Programs (the Director), filed a motion for a 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 filed a response in opposition to the Director's motion for a summary decision.

In a Decision and Order dated September 30, 2011, the administrative law judge found that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l). Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that further proceedings or actions related to this claim should be held in abeyance pending resolution of the constitutional challenges to the Patient Protection and Affordable Care Act. The Director responds in support of the administrative law judge's award of benefits. In a reply brief, employer reiterates its previous contentions of error.

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

Exhibit 6. At the time of his death, the miner was receiving federal black lung benefits pursuant to an award on his lifetime claim. *Hrubochak v. Barnes & Tucker Co.*, BRB No. 90-1664 BLA (July 29, 1993) (unpub.).

U.S. 359, 363 (1965).

Employer's argument, that further proceedings or actions related to this claim should be held in abeyance pending resolution of the constitutional challenges to the Patient Protection and Affordable Care Act, is moot. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. , 2012 WL 2427810 (June 28, 2012).

In this case, claimant satisfied her burden to establish each fact necessary to demonstrate her entitlement under amended Section 932(l): that she filed her claim after January 1, 2005; that she is an eligible survivor of the miner; that her claim was pending after March 23, 2010; and that the miner was determined to be eligible to receive benefits at the time of his death. Therefore, we affirm the administrative law judge's determination that claimant is derivatively entitled to benefits pursuant to amended Section 932(l). 30 U.S.C. §932(l).

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