

BRB No. 12-0056 BLA

MARGARET E. LEHMAN)
(Widow of JAMES LEHMAN))
)
 Claimant-Respondent)
)
 v.)
)
 HESHBON COAL COMPANY,) DATE ISSUED: 09/18/2012
 INCORPORATED)
)
 and)
)
 STATE WORKERS' INSURANCE FUND)
)
 Employer/Carrier-)
 Petitioners)
)
 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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Edward K. Dixon and Ryan M. Krescanko (Zimmer Kunz, PLLC), Pittsburgh, Pennsylvania, for employer/carrier.

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/carrier (employer) appeals the Decision and Order Awarding Benefits (2011-BLA-6061) of Administrative Law Judge Michael P. Lesniak 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, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. *See* Section 1556 of the Patient Protection and Affordable Care Act (PPACA), P. 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 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 August 29, 2011, the Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Summary Decision, arguing that under amended Section 932(l), and given the filing date of her claim, claimant¹ is entitled to benefits based on the award of benefits to her deceased husband.² In response, employer argued that it has a right to a hearing with regard to any contested issue of fact or law that has not been resolved by the Director. Specifically, employer asserted that it intended to contest the constitutionality of the PPACA and amended Section 932(l). Employer also asserted that it intended to contest claimant's entitlement to survivor's benefits as an "eligible survivor" under amended Section 932(l). Claimant did not file a response to the Director's motion.

In his Decision and Order Awarding Benefits, the administrative law judge found that claimant satisfied the criteria for derivative entitlement pursuant to amended Section 932(l), and awarded benefits to commence as of December 1, 2010, the first day of the month in which the miner died.

On appeal, employer requests that further proceedings or actions related to this claim be held in abeyance pending resolution of the legal challenges in federal court to the amendments to the Black Lung Benefits Act in the PPACA. Employer also challenges the application of amended Section 932(l) to this claim. The Director

¹ Claimant is the widow of the miner, who died on December 14, 2010. Director's Exhibit 4. She filed her survivor's claim on January 4, 2011. Director's Exhibit 2.

² The miner filed a claim on February 6, 1984. Director's Exhibit 1. At the time of his death, the miner was receiving federal black lung benefits pursuant to an award on his lifetime claim. Director's Exhibit 5.

responds, urging affirmance of the administrative law judge's award of benefits. Claimant has not filed a brief in this appeal.³

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.⁴ 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).

Employer requests that further proceedings or actions related to this claim be held in abeyance pending resolution of the legal challenges in federal court to the amendments to the Black Lung Benefits Act in the PPACA. Consistent with our reasoning in *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-201 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011)(Order)(unpub.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011), we reject employer's request to hold this case in abeyance pending resolution of the legal challenges in federal court to the amendments to the Black Lung Benefits Act in the PPACA. *See also Stacy v. Olga Coal Co.*, 24 BLR 1-207, 1-215 (2010); *Fairman v. Helen Mining Co.*, 24 BLR 1-225, 1-229 (2011).

Employer also contends that claimant is not an "eligible survivor" within the meaning of amended Section 932(l) because she did not prove that pneumoconiosis caused, or contributed to, the miner's death. Contrary to employer's contention, the automatic entitlement provisions of amended Section 932(l) provide benefits to a survivor without the requirement that she prove that the miner's death was due to pneumoconiosis. *B & G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 249-50, 25 BLR 2-13, 2-38-39, 2-44 (3d Cir. 2011); *Fairman*, 24 BLR at 1-231. Thus, we reject employer's assertion that claimant is not an "eligible survivor" within the meaning of amended Section 932(l).

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 entitled to receive survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l). Director's Exhibits 2, 5.

³ Employer filed a brief in reply to the response brief of the Director, Office of Workers' Compensation Programs, reiterating its prior contentions.

⁴ The record indicates that the miner was employed in the coal mining industry in Pennsylvania. Director's Exhibit 1. Accordingly, the law of the United States Court of Appeals for the Third Circuit is applicable. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

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