

BRB No. 12-0499 BLA

IVORY BRIDGMON)
)
 Claimant-Respondent)
)
 v.)
)
 DRUMMOND COMPANY) DATE ISSUED: 04/25/2013
)
 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 Awarding Benefits of Ralph A Romano, Administrative Law Judge, United States Department of Labor.

John A. Smyth III, Will A. Smith, and Katherine A. Collier (Maynard, Cooper & Gale, P.C.), Birmingham, Alabama, 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 Awarding Benefits (2011-BLA-05252) of Administrative Law Judge Ralph A Romano, rendered on a subsequent survivor's claim¹ filed on June 15, 2010, pursuant to the Black Lung Benefits Act, as amended, 30

¹ Claimant is the widow of the miner, who died on March 2, 2005. Director's Exhibits 5, 6. Claimant filed her initial claim for survivor's benefits on March 23, 2005,

U.S.C. §§901-944 (Supp. 2011) (the Act). The administrative law judge found that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l).² Specifically, the administrative law judge found that claimant is the survivor of the miner, who was receiving federal black lung benefits at the time of his death,³ and that the survivor's claim was filed after January 1, 2005, and was pending after March 23, 2010. Accordingly, the administrative law judge awarded survivor's benefits, commencing February 2006, the month after the month in which the denial of the prior claim became final.

On appeal, employer challenges the constitutionality of amended Section 932(l) and its application to this claim. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the 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 supported by substantial evidence, is rational, and is in accordance with applicable law.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

We reject employer's assertion that the retroactive application of amended Section 932(l) to this claim constitutes a violation of its due process rights and results in an

and the district director denied benefits on December 21, 2005. Director's Exhibit 2. Claimant took no further action with respect to the denial until she filed the current claim.

² Amended Section 932(l) of the Act, applies to claims filed after January 1, 2005 that were pending on or after March 23, 2010, and 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), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119, 260 (2010).

³ The miner was receiving benefits at the time of his death pursuant to a Decision and Order - Awarding Benefits issued by Administrative Law Judge Gerald M. Tierney on January 14, 1998. *See* Decision and Order at 2; Director's Exhibit 1.

⁴ The record reflects that the miner's coal mine employment was in Alabama. Director's Exhibits 1, 2, 7. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

improper taking of private property under the United States Constitution. *W. Va. CWP Fund v. Stacy*, 671 F. 3d 378, 25 BLR 2-65 (4th Cir. 2011), *cert. denied*, 568 U.S. (2012); *see also Vision Processing, LLC v. Groves*, 705 F.3d 551, BLR (6th Cir. 2013); *B&G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 254-63, 25 BLR 2-13, 2-44-61 (3d Cir. 2011); *Keene v. Consolidation Coal Co.*, 645 F.3d 844, 24 BLR 2-385 (7th Cir. 2011). We also reject employer's contention that the operative date for determining eligibility for survivor's benefits 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. *Stacy*, 671 F.3d at 388-89, 25 BLR at 2-82-83.

There is no merit to employer's assertion 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 provision of amended Section 932(l) provides benefits to a survivor without the requirement that she prove that the miner's death was due to pneumoconiosis. *See Campbell*, 662 F.3d at 249-50, 25 BLR at 2-38-39; *Fairman v. Helen Mining Co.*, 24 BLR 1-225, 1-231 (2011); *see also Stacy*, 671 F. 3d at 389-91, 25 BLR at 2-85-88.

Finally, we reject employer's contention that claimant is not eligible for survivor's benefits under amended Section 932(l), because her prior claim was finally denied and her subsequent claim is barred by fundamental principles of res judicata or claim preclusion and 20 C.F.R. §725.309(d)(3). In *Richards v. Union Carbide Corp.*, 25 BLR 1-31 (2012) (en banc) (McGranery, J., concurring and dissenting) (Boggs, J., dissenting), *appeal docketed*, No. 12-1294 (4th Cir. Mar. 8, 2012), the Board rejected similar arguments and held that the automatic entitlement provisions of amended Section 932(l) are available to an eligible survivor who filed a subsequent claim after January 1, 2005 that was pending on or after March 23, 2010.

Because claimant filed her subsequent survivor's claim after January 1, 2005, it 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 benefits pursuant to amended Section 932(l). *See* 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