

BRB No. 11-0108 BLA

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| SARAH STILTNER |) | |
| (Widow of ESTIL STILTNER) |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| LONG CONSTRUCTION COMPANY |) | DATE ISSUED: 08/22/2011 |
| |) | |
| Employer-Petitioner |) | |
| |) | |
| 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 Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Ronald E. Gilbertson (Husch Blackwell LLP), Washington, D.C., for employer.

Helen H. Cox (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: McGRANERY, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Order Awarding Survivor's Benefits (2010-BLA-5222) of Administrative Law Judge Linda S. Chapman 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). Claimant filed her claim on February 24, 2009.¹ Director's Exhibit 2.

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 receive survivor's benefits, without having to first establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l); Pub. L. No. 111-148, §1556(b), (c).

Before the scheduled hearing, claimant requested that an award of benefits be entered pursuant to amended Section 932(l), as claimant meets the eligibility criteria for automatic entitlement pursuant to amended Section 932(l).

In her Order dated September 22, 2010, the administrative law judge determined that the miner was finally awarded benefits on his lifetime claim, that claimant filed her survivor's claim after January 1, 2005, her claim was pending, and that she was an eligible survivor of the miner. The administrative law judge thus found that claimant satisfied the eligibility criteria for automatic entitlement to benefits under amended Section 932(l). Accordingly, the administrative law judge granted claimant's request and awarded benefits in this survivor's claim. Order at 2.

On appeal, employer challenges the administrative law judge's application of amended Section 932(l) to this case. Claimant and the Director, Office of Workers' Compensation Programs (the Director), 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 Decision and Order must be affirmed if it is rational, supported by substantial evidence,

¹ Claimant is the widow of the miner, Estil Stiltner, who died on February 4, 2009. The miner filed claims for black lung benefits in 1983, 1999 and 2000. After a lengthy procedural history, the United States Court of Appeals for the Fourth Circuit affirmed the award of benefits in the miner's 2000 claim in *Long Construction Co. v. Stiltner*, 389 F. App'x 308, 2010 WL 3044965 (4th Cir. July 29, 2010) (unpub.).

and in accordance with applicable law.² 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 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 4-7. The Board has determined that employer’s argument lacks merit.

As the administrative law judge correctly noted, the recent amendment reviving Section §932(l) of the Act applies to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Pub. Law. No. 111-148, §1556(c); Order at 2. Contrary to employer’s argument, the Board has 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.*, 24 BLR 1-207, 1-213 (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 receive benefits, based solely on the miner’s lifetime award, without having to prove that the miner died due to pneumoconiosis.³ *Stacy*, 24 BLR at 1-213; *see* 30 U.S.C. §932(l).

Consequently, we affirm the administrative law judge’s determination that claimant is derivatively entitled to receive survivor’s benefits pursuant to amended Section 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 have been eligible to receive benefits at the time of his death. 30 U.S.C. §932(l); Pub. L. No. 111-148, §1556(b), (c).

² The record indicates that the miner’s coal mine employment was in West Virginia. Director’s Exhibit 2. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

³ Employer’s reliance upon the Board’s decision in *Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989), to support its argument that the filing date of the miner’s claim determines whether claimant is eligible for benefits under amended Section 932(l), is misplaced. Employer’s Brief at 5-6. The Board’s decision in *Smith* did not address the recent statutory language amending the Act, and is not relevant to the issue of the availability of derivative entitlement currently before the Board.

Accordingly, the administrative law judge's Order Awarding Survivor's Benefits is affirmed.

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge