

BRB No. 11-0140 BLA

EARSIE CRABTREE)	
(Widow of JOHN B. CRABTREE))	
)	
Claimant-Respondent)	
)	
v.)	
)	
PARAMONT COAL COMPANY)	
)	
and)	
)	DATE ISSUED: 08/23/2011
PYXIS RESOURCES COMPANY)	
)	
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 Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer/carrier.

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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (09-BLA-5172) of Administrative Law Judge Pamela Lakes Wood (the administrative law judge) rendered on a survivor's claim¹ 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), Public Law 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 June 29, 2010, the administrative law judge issued an Order Requiring Response and to Show Cause for the parties to address whether an order awarding benefits should be granted in this case. In response, employer requested that the case be held in abeyance until various legal challenges were resolved and implementing regulations were promulgated. The Director, Office of Workers' Compensation Programs (the Director), responded and argued 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.²

The administrative law judge found that claimant is an eligible survivor of the miner, and that claimant met the eligibility requirements for application of amended Section 932(l), as she filed her survivor's claim for benefits after January 1, 2005, the claim was pending on March 23, 2010, the effective date of the amendments, and the miner was receiving benefits at the time of his death. Accordingly, the administrative law judge found claimant entitled to survivor's benefits, commencing as of November 1, 2007.

On appeal, employer argues that the retroactive application of the automatic entitlement provisions of amended Section 932(l) to claims filed after January 1, 2005 constitutes a violation of its due process rights and a taking of private property.

¹ Claimant, Earsie Crabtree, is the widow of the miner, who died on November 10, 2007. Director's Exhibit 17. Claimant filed her claim for survivor's benefits on February 8, 2008. Director's Exhibit 2.

² At the time of his death, the miner was receiving federal black lung benefits pursuant to an award issued by Administrative Law Judge Robert S. Amery on November 22, 1991. Director's Exhibit 1.

Assuming, *arguendo*, that retroactive application is permissible, employer asserts that the operative date for determining eligibility pursuant to amended Section 932(l) should be the date of filing of the miner's claim. Employer requests that further proceedings or actions related to this claim be held in abeyance, pending the promulgation of implementing regulations and resolution of the constitutional challenges to Public Law No. 111-148 in federal court. Claimant has not filed a response brief in this appeal. The Director 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 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).

The Board has held that the operative date for determining eligibility for survivor's 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 (Dec. 22, 2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011). For the reasons set forth in *Stacy*, we reject employer's arguments to the contrary. We further reject employer'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.); *see also Keene v. Consolidation Coal Co.*, F.3d , 2011 WL 1886106 (7th Cir. 2011). While employer argues that the holding in *Mathews* does not apply to this case, because *Mathews* involved an insurance carrier, whereas employer is self-insured, the Director correctly maintains that this argument must fail, as self-insured coal mine operators are held to the same standards as insurance carriers. Director's Brief at 9-10; *see* 20 C.F.R. §§726.4, 726.110(a)(1). Lastly, as we did in *Mathews*, we reject employer'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 entitled to receive survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l).

Accordingly, the Decision and Order Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge