

BRB No. 12-0206 BLA

VIRGIE MAE ROARK)
(Widow of CARL ROARK))
)
 Claimant-Respondent)
)
 v.)
)
 ADAMS RESOURCES & ENERGY,) DATE ISSUED: 12/19/2012
 INCORPORATED)
)
 and)
)
 OLD REPUBLIC INSURANCE 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 John P. Sellers, III,
Administrative Law Judge, United States Department of Labor.

Frank K. Newman (Cole, Cole, Anderson & Newman, PSC), Barbourville,
Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for
employer.

Jonathan Rolfe (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: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2012-BLA-5108) of Administrative Law Judge John P. Sellers, III, rendered on a survivor's claim filed on August 24, 2011, pursuant to the provisions of the Black Lung Benefits Act, as amended 30 U.S.C. §§901-944 (Supp. 2011) (the Act).¹ On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, were enacted. In pertinent part, the amendments revived Section 932(*l*) of the Act, which provides that a survivor of a miner who was determined to be 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 26, 2011, the district director issued a Proposed Decision and Order awarding benefits pursuant to amended Section 932(*l*). Employer requested a hearing and the case was transferred to the Office of Administrative Law Judges.

On December 13, 2011, the administrative law judge issued an Order to Show Cause why an award of benefits should not be issued, based upon the absence of any genuine issue of material fact or question of law which would preclude claimant's automatic entitlement to benefits. Employer did not respond. In a Decision and Order dated December 23, 2011, the administrative law judge determined that claimant satisfied the eligibility criteria for automatic entitlement pursuant to amended Section 932(*l*) and awarded benefits accordingly.

On appeal, employer argues that, because the miner's claim was filed prior to January 1, 2005, amended Section 932(*l*) does not apply to the survivor's claim in this case. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, also responds in support of the administrative law judge's application of amended Section 932(*l*) and urges the Board to affirm the award of benefits.²

¹ Claimant is the surviving spouse of the miner, Carl Roark, who died on August 1, 2011. Director's Exhibit 7. At the time of his death, the miner was receiving federal black lung benefits pursuant to an award on his lifetime claim. Director's Exhibits 1, 4.

² Employer's request that further proceedings or actions related to this claim should be held in abeyance pending resolution of the constitutional challenges to the

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.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer contends that the administrative law judge erred in applying amended Section 932(l) in this case, as the operative date for determining eligibility under amended Section 932(l) is the date the miner's claim was filed, not the date that the survivor's claim was filed. We reject employer's argument for the reasons that the Board rejected a substantially similar argument in *Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), *aff'd sub nom. W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 383-89, 25 BLR 2-65, 2-76-85 (4th Cir. 2011), *cert. denied*, 568 U.S. (2012). *See also B&G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 244 & n.12, 25 BLR 2-13, 2-28 & n.12 (3d Cir. 2011).

With respect to the administrative law judge's findings under amended Section 932(l), he determined correctly that claimant established: that she filed her claim after January 1, 2005; that she is an eligible survivor of the miner; that her claim was pending on March 23, 2010; and that it had been determined that the miner was eligible to receive benefits at the time of his death. Decision and Order at 3-4. Therefore, we affirm the administrative law judge's determination that claimant is entitled to receive benefits pursuant to amended Section 932(l) of the Act. 30 U.S.C. §932(l).

Patient Protection and Affordable Care Act, Public Law No. 111-148, is denied. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. , 132 S.Ct. 2566 (2012).

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner's coal mine employment was in Kentucky. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 1 at 627.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge