

BRB No. 13-0363 BLA

BETTY JENT)
(Widow of ROY JENT))
)
Claimant-Respondent)
)
v.) DATE ISSUED: 12/18/2013
)
CUMBERLAND RIVER COAL COMPANY)
)
and)
)
ARCH COAL, INCORPORATED)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Order of William S. Colwell, Administrative Law Judge,
United States Department of Labor.

James D. Holliday, Harlan, Kentucky, for claimant.

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

Sarah M. Hurley (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, McGRANERY
and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Order (2011-BLA-5545) of Administrative Law Judge William S. Colwell (the administrative law judge) awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). This case involves claimant's modification request of the denial of her survivor's claim, which she originally filed on October 19, 2006.¹ Initially, Administrative Law Judge Janice K. Bullard denied benefits on August 22, 2008, finding that claimant failed to establish that the miner's death was due to pneumoconiosis. Director's Exhibit 60. The Board subsequently affirmed Judge Bullard's denial of benefits on September 29, 2009. Director's Exhibit 75. Claimant timely requested modification on April 8, 2010. Director's Exhibit 76.

The administrative law judge found that claimant filed her claim after January 1, 2005, that she is an eligible survivor of the miner, that her claim was pending after March 23, 2010, and that the miner was determined to be eligible to receive benefits at the time of his death. Accordingly, the administrative law judge awarded benefits pursuant to amended Section 932(l) of the Act, 30 U.S.C. §932(l).²

On appeal, employer challenges the application of amended Section 932(l) to this claim. Employer also challenges the administrative law judge's determination of the benefits commencement date. Claimant and the Director, Office of Workers' Compensation Programs, respond, 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.³ 33 U.S.C. §921(b)(3), as incorporated by 30

¹ Claimant is the widow of the miner, who died on May 5, 2006. Director's Exhibit 12. The miner was found to be eligible to receive benefits at the time of his death. Director's Exhibit 80B.

² Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress 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 receive 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(b), 124 Stat. 119, 260 (2010).

³ The record reflects that the miner's last coal mine employment was in Kentucky. Director's Exhibit 80B. Therefore, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer first argues that the administrative law judge erred in relying on amended Section 932(l) to grant modification of the denial of benefits, because a change in the law is not a ground for modification. Employer’s Brief at 3-9. The Board rejected a similar argument in *Mullins v. ANR Coal Co.*, 25 BLR 1-49, 1-53 (2012), holding that amended Section 932(l) applies to a survivor’s claim that was filed after January 1, 2005, and which is pending after March 23, 2010, because of a timely request for modification. For the reasons set forth in *Mullins*, we reject employer’s argument.

In this case, claimant satisfied her burden to establish each fact necessary to demonstrate her entitlement under amended Section 932(l): she filed her claim after January 1, 2005; she is an eligible survivor of the miner; her claim was pending after March 23, 2010; and the miner was determined to be eligible to receive benefits at the time of his death. Therefore, we affirm the administrative law judge’s determination that claimant is derivatively entitled to receive benefits pursuant to amended Section 932(l). 30 U.S.C. §932(l).

Employer argues that the administrative law judge erred by awarding benefits as of May 2006, the month in which the miner died. We disagree. When benefits are awarded under amended Section 932(l) upon a grant of modification of the denial of an initial survivor’s claim, benefits are payable from the month of the miner’s death. *See* 20 C.F.R. §725.503(c), (d)(1); *McCoy Elkhorn Coal Corp. v. Dotson*, 714 F.3d 945, 946, 25 BLR 2-249, 2-253 (6th Cir. 2013), *aff’g* 25 BLR 1-13, 1-18 (2011) (en banc); *Surratt v. U.S. Steel Mining Co.*, 25 BLR 1-76, 1-79 (2012). We, therefore, affirm the administrative law judge’s determination that the commencement date for benefits is May 2006, the month in which the miner died. Director’s Exhibit 12.

Accordingly, the administrative law judge's Order awarding benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge