

BRB No. 11-0470 BLA

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| CONNIE K. PRATHER |) | |
| (Widow of GARY E. PRATHER) |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| WESTMORELAND COAL COMPANY |) | DATE ISSUED: 02/27/2012 |
| |) | |
| 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 William S. Colwell,
Administrative Law Judge, United States Department of Labor.

Timothy C. MacDonnell (Washington and Lee University Legal Clinic),
Lexington, Virginia, for claimant.

George E. Roeder, III (Jackson Kelly PLLC), Morgantown, West Virginia,
for employer.

Ann Marie Scarpino (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
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Order Awarding Survivor's Benefits (2011-BLA-5368) of Administrative Law Judge William S. Colwell, with respect to a 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). Prior to the hearing, claimant submitted a Motion for Summary Decision, asserting that she was automatically entitled to benefits pursuant to the Patient Protection and Affordable Care Act (PPACA).² Employer contended, in response, that application of the PPACA would not be appropriate in this claim. The Director, Office of Workers' Compensation Programs (the Director), did not respond.

In his Decision and Order, the administrative law judge found that, pursuant to amended Section 422(*l*), 30 U.S.C. §932(*l*), claimant is automatically entitled to benefits based on the award of benefits in the miner's claim. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the constitutionality of amended Section 932(*l*), and its application to this claim. The Director responds and asserts that amended Section 932(*l*) is applicable. Claimant responds, agreeing with the Director's position.

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.³ 33 U.S.C. §921(b)(3), as incorporated by 30

¹ Claimant is the widow of the miner, Gary E. Prather, who was awarded black lung benefits in a March 24, 2010 Decision and Order issued by Administrative Law Judge William S. Cowell. Claimant filed her claim for benefits on May 1, 2010. Director's Exhibit 3.

² Section 1556 of the Patient Protection and Affordable Care Act (PPACA) included amendments to the Black Lung Benefits Act (the Act), affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010. 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). In pertinent part, the amendments revived Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), providing 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.

³ The record reflects 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

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

Employer initially asserts that the retroactive application of amended Section 932(l) to this claim constitutes a violation of its due process rights and an unconstitutional taking of private property. Employer also maintains that the operative date for determining eligibility for survivor’s benefits pursuant to amended Section 932(l) is the date the miner’s claim was filed, not the date the survivor’s claim was filed. Finally, employer requests that further proceedings or actions related to this claim be held in abeyance, pending resolution of the constitutional challenges to the PPACA in federal court.

We 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 substantially similar 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.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011). *See also Keene v. Consolidation Coal Co.*, 645 F.3d 844, 24 BLR 2-385 (7th Cir. 2011). Further, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has affirmed the Board’s holding 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. *W. Va. CWP Fund v. Stacy*, F. 3d , BLR , No. 11-1020, 2011 WL 6396510 (4th Cir. Dec. 21, 2011), *aff’g Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010). For the reasons set forth in our decision in *Stacy*, we reject employer’s arguments to the contrary and, consistent with our reasoning in *Mathews*, we also reject employer’s request to hold this case in abeyance pending resolution of the legal challenges to the PPACA. *Mathews*, 24 BLR at 1-201.

States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge