

BRB No. 11-0355 BLA

DARLA M. BUCHANAN)	
(Widow of JIMMIE D. BUCHANAN))	
)	
Claimant-Respondent)	
)	
v.)	
)	
MIDWEST COAL COMPANY (f/k/a)	DATE ISSUED: 01/27/2012
AMAX COAL COMPANY))	
)	
Employer-Petitioner)	
)	
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 Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Anne Megan Davis (Johnson, Jones, Snelling, Gilbert & Davis, P.C.), Chicago, Illinois, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Barry H. Joyner (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 Decision and Order Awarding Benefits (11-BLA-5040) of Administrative Law Judge Alice M. Craft 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).

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. *See* Section 1556 of the Patient Protection and Affordable Care Act (PPACA), Pub. L. 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 an eligible 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 December 9, 2010, following issuance of the administrative law judge's Notice of Hearing and Pre-Hearing Order in this case, claimant¹ filed a motion for summary judgment, arguing that there is no genuine issue as to any material fact concerning her entitlement to survivor's benefits under amended Section 932(l). The Director, Office of Worker's Compensation Programs (the Director), responded in support of claimant's motion for a finding of automatic entitlement under amended Section 932(l). Employer did not respond.

In a Decision and Order Awarding Survivor's Benefits issued on January 7, 2011, the administrative law judge found, *inter alia*, that the miner was receiving benefits at the time of his death, 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, and the claim was pending after March 23, 2010, the effective date of the amendments. Finding that no genuine issue of material fact exists, and that claimant is automatically entitled to survivor's benefits pursuant to amended Section 932(l), the administrative law judge granted claimant's motion for summary judgment.

On appeal, employer challenges the administrative law judge's application of amended Section 932(l) to this case. Claimant and the Director respond, urging affirmance of the administrative law judge's award of survivor's benefits.

¹ Claimant is the widow of the miner, who died on April 30, 2010. Director's Exhibit 5. At the time of his death, the miner was receiving federal black lung benefits pursuant to a final award on his lifetime claim. Decision and Order at 2; Director's Exhibit 8; *see RAG American Coal Co. v. Director, OWCP [Buchanan]*, 576 F.3d 418, 24 BLR 2-223 (7th Cir. 2009). Claimant filed her claim for survivor's benefits on May 9, 2010. Director's Exhibit 2.

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).

Employer 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, in violation of the Fifth Amendment to the United States Constitution. Employer's Brief at 15, 18, 19. Employer also 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 21, 28-29. Further, employer asserts that this case should be held in abeyance pending resolution of the constitutional challenges to the PPACA in federal court. Employer's Brief at 5-7, 10-11. Employer's arguments lack merit.

We reject employer's contention that retroactive application of the automatic entitlement provision 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 B & G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, BLR (3d Cir. 2011); *Keene v. Consolidation Coal Co.*, 645 F.3d 844, 24 BLR 2-385 (7th Cir. 2011). Further, 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. *West Virginia CWP Fund v. Stacy*, F.3d , BLR , No. 11-1020, 2011 WL 6396510 (4th Cir. Dec. 21, 2011), *petition for reh'g en banc filed* (Jan. 20, 2012). For the reasons set forth in *Stacy*, we reject employer's arguments to the contrary and, consistent with our reasoning in *Mathews*, we reject employer's request to hold this case in abeyance pending resolution of legal challenges to the PPACA. *See also Keene*, 645 F.3d 844, 24 BLR 2-385; *Fairman v. Helen Mining Co.*, 24 BLR 1-225 (2011), *appeal docketed*, No. 11-2445 (3d Cir. May 31, 2011).

Because claimant filed her survivor's claim after January 1, 2005, her claim was pending after 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 derivatively entitled to receive survivor's benefits pursuant to amended Section 422(l) of the Act, 30 U.S.C. §932(l).

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

SO ORDERED.

NANCY S. DOLDER
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge