

BRB No. 11-0102 BLA

SIODA KOBOSKI)
(Widow of CHARLES KOBOSKI))
)
 Claimant-Respondent)
)
 v.)
)
 NO. 10 COAL MINE, INCORPORATED)
)
 and)
) DATE ISSUED: 07/20/2011
 WEST VIRGINIA COAL WORKERS')
 PNEUMOCONIOSIS FUND)
)
 Employer/Carrier-)
 Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Summary Decision of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Karin L. Weingart (Spilman, Thomas & Battle, PLLC), Charleston, West Virginia, for employer.

Michelle S. Gerdano (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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Summary Decision (2009-BLA-5908) of Administrative Law Judge Pamela Lakes Wood awarding benefits on a 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). This case involves a survivor's claim filed on October 24, 2008.¹

On March 23, 2010, while this case was pending before the administrative law judge, amendments to the Act, affecting claims filed after January 1, 2005, were enacted. The amendments, in pertinent part, revive Section 932(l) of the Act, which provides that a 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.² 30 U.S.C. §932(l).

¹ Claimant is the surviving spouse of the miner, who died on October 7, 2008. Director's Exhibit 8. At the time of his death, the miner was receiving federal black lung benefits pursuant to an award on his lifetime claim. Director's Exhibit 8.

² As it existed prior to March 23, 2010, Section 932(l) provided that:

In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this subchapter at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner, except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981, [*sic*].

30 U.S.C. §932(l). On March 23, 2010, Public Law No. 111-148 amended Section 932(l) as follows: "(b) Continuation of Benefits – Section 422(l) of the Black Lung Benefits Act (30 U.S.C. §932(l)) is amended by striking 'except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981'." Pub. L. No. 111-148, §1556(b), 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §932(l)). Section 1556 of Public Law No. 111-148 provides further that "[t]he amendments made by this section shall apply with respect to claims filed under part B or part C of the Black Lung Benefits Act (30 U.S.C. 921 et seq., 931 et seq.) after January 1, 2005, that are pending on or after the date of enactment of this Act." Pub. L. No. 111-148, §1556(c).

On May 27, 2010, the Director, Office of Workers' Compensation Programs (the Director), moved for a summary decision, asserting that there was no genuine issue of fact as to whether claimant was entitled to benefits under amended Section 932(l). Claimant subsequently joined in the Director's motion. By Order dated June 25, 2010, the administrative law judge canceled the scheduled hearing, and ordered the parties to show cause, on or before July 22, 2010, why an order awarding survivor's benefits should not be entered. *See* 20 C.F.R. §725.452(d). Employer responded by conceding that claimant was "ostensibly entitled to an award of benefits" under amended Section 932(l). Employer, however, reserved its right to challenge the constitutionality of Section 1556 of Public Law No. 111-148. Claimant responded in support of an award of benefits.

In a Summary Decision dated September 10, 2010, the administrative law judge noted that the miner was receiving benefits at the time of his death,³ that claimant filed her survivor's claim on October 24, 2008, and that she is an eligible survivor of the miner. The administrative law judge, therefore, found that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's application of amended Section 932(l) to this case. The Director responds, urging affirmance of the administrative law judge's award of benefits. Claimant has not filed a response brief.

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'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer asserts that retroactive application of amended Section 932(l) is unconstitutional, because it violates employer's due process rights. Employer's Brief at 3-7. Employer also argues that this case should be held in abeyance pending the resolution of legal challenges to Public Law No. 111-148. *Id.* at 7-9.

We reject employer's arguments regarding the constitutionality of the amendments, as applied to this case. The arguments employer makes are virtually identical to the ones that the Board rejected in *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-198-200 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011)

³ With its Motion for Summary Decision, the Director, Office of Workers' Compensation Programs, attached a copy of Administrative Law Judge Jeffrey Tureck's February 7, 1997 Decision and Order on Remand awarding benefits in the miner's claim.

(Order) (unpub.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011). We, therefore, reject them here for the reasons set forth in that case. *Mathews*, 24 BLR at 1-198-200; *see also Stacy v. Olga Coal Co.*, 24 BLR 1-207, 1-214 (2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011). We also reject employer's request that this case be held in abeyance pending resolution of the legal challenges to Public Law No. 111-148. *See Mathews*, 24 BLR at 1-201.

In this case, claimant satisfied her burden to establish each fact necessary to demonstrate her entitlement under amended Section 932(l): 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 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 benefits pursuant to amended Section 932(l). 30 U.S.C. §932(l).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge