

BRB No. 12-0629 BLA

| | | |
|-------------------------------|---|-------------------------|
| ADA T. INGRAM |) | |
| (Widow of T.J. INGRAM) |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| U.S. STEEL MINING COMPANY |) | DATE ISSUED: 06/20/2013 |
| |) | |
| Self-Insured |) | |
| 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 Based on Automatic Entitlement of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Abigail P. van Alstyne (Quinn, Connor, Weaver, Davies & Rouco, LLP), Birmingham, Alabama, for claimant.

Neil Richard Clement (Richardson Clement, PC), Birmingham, Alabama, 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: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits Based on Automatic Entitlement (2012-BLA-05610) of Administrative Law Judge Theresa C. Timlin, rendered on a survivor's claim filed on January 6, 2012, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act).¹ The district director issued a Proposed Decision and Order awarding benefits on January 11, 2012, pursuant to amended 30 U.S.C. §932(l) of the Act.² Director's Exhibit 6. Pursuant to employer's request, the case was forwarded to the Office of Administrative Law Judges for a hearing. On July 23, 2012, the administrative law judge issued an Order to Show Cause why claimant should not be found entitled to benefits under amended Section 932(l). Employer filed a Response to Order to Show Cause asserting that the operative date for determining eligibility under amended Section 932(l) is the filing date of the miner's claim, and that amended Section 932(l) does not relieve claimant of the burden to prove that pneumoconiosis caused or contributed to the miner's death. In a decision issued on August 7, 2012, the administrative law judge rejected employer's arguments and found that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l). Specifically, the administrative law judge found that claimant is the survivor of the miner; that the miner was receiving federal black lung benefits at the time of his death;³ that the survivor's claim was filed after January 1, 2005; and that it was pending after March 23, 2010. Accordingly, the administrative law judge awarded survivor's benefits, commencing November 2011, the month in which the miner died.

On appeal, employer asserts that retroactive application of the automatic entitlement provisions of amended Section 932(l) to claims filed after January 1, 2005

¹ Claimant is the widow of the miner, T.J. Ingram, who died on November 29, 2011. Director's Exhibits 2, 5.

² Congress enacted amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, amended Section 932(l) 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), *amended by* Pub. L. No. 111-148, §1556(b), 124 Stat. 119, 260 (2010).

³ The miner was receiving benefits at the time of his death pursuant to a Decision and Order Awarding Benefits, issued by Administrative Law Judge Adele Higgins Odegard on May 27, 2008. Director's Exhibit 1. The Board affirmed the award of benefits in the miner's claim. *T.J.I. [Ingram] v. U.S. Steel Mining Co.*, BRB No. 08-0690 BLA (June 30, 2009) (unpub.).

results in a violation of employer's right to due process of law. Employer further 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. In addition, employer argues that claimant is not entitled to benefits because she did not prove that pneumoconiosis caused or contributed to the miner's death, as required under 30 U.S.C. §§921(a) and 922(a)(2).⁴ Claimant and the Director, Office of Workers' Compensation Programs, respond, urging the Board to affirm the administrative law judge's 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.⁵ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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 under the Fifth Amendment of the United States Constitution. *See W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 25 BLR 2-65 (4th Cir. 2011), *aff'g Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), *cert. denied*, 568 U.S. (2012); *B & G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 25 BLR 2-13 (3d Cir. 2011); *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-200 (2010). We also reject, as meritless, employer's argument that the operative date for determining eligibility for survivor's benefits under amended Section 932(l) is the date the miner's claim was filed. *See Stacy*, 671 F.3d at 388, 25 BLR at 2-83. Lastly, as the most recent amendment to the Act, amended Section 932(l) overrides any conflicting language contained in 30 U.S.C. §§901, 921(a), and 922(a)(2) that requires a survivor to prove that pneumoconiosis caused the miner's death in order to receive benefits. *See Stacy*, 671 F.3d at 389, 25 BLR at 2-88; *Campbell*, 662 F.3d at 238, 25 BLR at 2-18. Hence, we reject employer's argument in this regard.

⁴ Employer's request that the case be held in abeyance pending the decision of the United States Court of Appeals for the Eleventh Circuit in *Starks v. U.S. Steel Mining Co., LLC*, BRB No. 10-0675 BLA (Aug. 3, 2011), *appeal docketed*, No. 11-14468 (11th Cir. Sept. 28, 2011), is denied.

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit, as the miner's coal mine employment was in Alabama. Director's Exhibit 1; *see Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); *[Ingram]*, BRB No. 08-0690 BLA, slip op. at 2 n.1.

Because claimant filed her survivor's claim after January 1, 2005, her claim was pending on 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 entitled to receive survivor's benefits pursuant to 30 U.S.C. §932(*l*).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge