

BRB No. 12-0002 BLA

PHYLLIS C. THOMPSON)	
(Widow of JAMES W. THOMPSON))	
)	
Claimant-Respondent)	
)	
v.)	
)	
FREEMAN UNITED COAL MINING)	
COMPANY)	DATE ISSUED: 03/06/2012
)	
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.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

John A. Washburn (Gould & Ratner, PLLC), Chicago, Illinois, for employer.

Emily Goldberg-Kraft (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-6091) of Administrative Law Judge William S. Colwell rendered 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 May 4, 2011.¹

On March 23, 2010, 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. Pub. L. No. 111-148, §1556(b), 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §932(l)). The district director awarded benefits to claimant pursuant to amended Section 932(l), and employer requested a hearing. Director's Exhibits 7, 8.

While the case was pending before the Office of Administrative Law Judges, claimant moved for a summary decision, asserting that there was no genuine issue of material fact regarding her entitlement to benefits under Section 932(l). Employer responded, urging the administrative law judge to delay a ruling until the United States Supreme Court issues a decision resolving the legal challenges to other provisions of Public Law No. 111-148.

In an Order Awarding Survivor's Benefits dated August 18, 2011, the administrative law judge found that the miner was receiving benefits at the time of his death, that claimant filed her survivor's claim after January 1, 2005, and that employer did not dispute that claimant is an eligible survivor of the miner. Order at 1-2. The administrative law judge, therefore, determined that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l). 30 U.S.C. §932(l). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the application of amended Section 932(l) is premature in light of the legal challenges to Public Law No. 111-148, and urges that this case be held in abeyance pending the resolution of those challenges. Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion for Summary Affirmance, requesting that the Board deny employer's abeyance request and affirm the administrative law judge's award of benefits. Employer has filed a reply brief reiterating its abeyance request.

¹ Claimant is the widow of the miner, who died on January 26, 2010. Director's Exhibits 4, 6. 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 3.

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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In this case, the administrative law judge found that 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. Order at 1-2. As the Director accurately notes, employer has not challenged any of these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We, therefore, grant the Director's motion, and affirm the administrative law judge's determination that claimant is derivatively entitled to benefits pursuant to amended Section 932(l) of the Act. 30 U.S.C. §932(l). Employer's request to hold this case in abeyance is denied. *See Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-201 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011) (Order)(unpub.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011).

Accordingly, the Director's Motion for Summary Affirmance is granted, and 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