

BRB No. 12-0072 BLA

BARBARA MILLER	)	
(Widow of GEORGE M. MILLER)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MARTINKA COAL COMPANY	)	DATE ISSUED: 11/19/2012
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Summary Decision-Awarding Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

James Hook, Waynesburg, Pennsylvania, for claimant.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., 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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Summary Decision-Awarding Benefits (2011-BLA-5672) of Administrative Law Judge Michael P. Lesniak, rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended 30 U.S.C. §§901-944 (Supp. 2011) (the Act). This case involves a survivor's claim filed on June 8, 2009.<sup>1</sup>

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 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*). The district director awarded benefits to claimant pursuant to amended Section 932(*l*), and employer requested a hearing. Director's Exhibits 35-38.

On August 2, 2011, the Director, Office of Workers' Compensation Programs (the Director), moved for a summary decision, asserting that, pursuant to amended Section 932(*l*), claimant was automatically entitled to benefits as a matter of law, and that there was no genuine issue as to any material fact concerning her entitlement. Employer responded, arguing that amended Section 932(*l*) should not be applied.

In a Summary Decision-Awarding Benefits dated October 18, 2011, the administrative law judge 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 application of amended Section 932(*l*) to this case. Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director responds in support of the administrative law judge's application of amended Section 932(*l*) to this case, and urges the Board to affirm the administrative law judge's award of benefits.<sup>2</sup>

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<sup>1</sup> Claimant is the widow of the miner, who died on August 10, 2007. Director's Exhibit 16. 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 1.

<sup>2</sup> Employer's argument that further proceedings or actions related to this claim should be held in abeyance pending resolution of the constitutional challenges to the Patient Protection and Affordable Care Act, Public Law No. 111-148, is moot. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. , 132 S.Ct. 2566 (2012).

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).

Employer contends that the operative date for determining eligibility under amended Section 932(l) is the date the miner's claim was filed, not the date the survivor's claim was filed. We reject employer's argument for the reasons that the Board rejected substantially similar arguments in *W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 383-89, 25 BLR 2-65, 2-76-85 (4th Cir. 2011), *aff'g Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), *cert. denied*, 568 U.S. (2012). *See also B&G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 244 & n.12, 25 BLR 2-13, 2-28 & n.12 (3d Cir. 2011).

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 it had been determined that the miner was eligible to receive benefits at the time of his death. Therefore, we affirm the administrative law judge's determination that claimant is entitled to receive benefits pursuant to amended Section 932(l) of the Act. 30 U.S.C. §932(l).

Accordingly, the administrative law judge's Summary Decision-Awarding Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge