

BRB No. 11-0217 BLA

WILLIE DOLORES CHAMBERS	)	
(Widow of LEWIS CHAMBERS)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DAVIDSON MINING COMPANY,	)	
INCORPORATED	)	DATE ISSUED: 10/27/2011
	)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

George E. Roeder, III (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Maia S. Fisher (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 Decision and Order Awarding Benefits (2010-BLA-5791) of Administrative Law Judge Richard A. Morgan 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). Claimant filed her survivor's claim on February 9, 2010.<sup>1</sup> Director's Exhibit 6.

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. The amendments, in pertinent part, revive Section 932(l) of the Act, which provides that the 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 October 28, 2010, while this case was pending before the administrative law judge, the Director, Office of Workers' Compensation Programs (the Director), moved for a summary decision, based on the recent amendments to the Act. Employer filed a response, arguing that the operative date for derivative entitlement is the date the miner's claim was filed. Employer contended that because the miner filed his claim in 2003, claimant's claim was not affected by the amendments to the Act and, therefore, claimant was not derivatively entitled to benefits. The Director filed a reply brief, urging the administrative law judge to reject employer's arguments and award benefits.

In a decision dated December 2, 2010, the administrative law judge found that the miner was eligible for benefits at the time of his death, that claimant is an eligible survivor of the miner, *see* 20 C.F.R. §725.212, and that her survivor's claim was filed after January 1, 2005, and was pending on March 23, 2010. Accordingly, the administrative law judge found that claimant is automatically entitled to survivor's benefits pursuant to amended Section 932(l).

On appeal, employer challenges the administrative law judge's application of amended 30 U.S.C. §932(l) to this case. Claimant has not filed a response brief. The Director responds, urging affirmance of the 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.<sup>2</sup> 33 U.S.C. §921(b)(3), as incorporated by 30

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<sup>1</sup> Claimant is the widow of the miner, who died on September 14, 2009. Director's Exhibits 6, 12. At the time of his death, the miner was receiving federal black lung benefits pursuant to a June 13, 2007, award on his lifetime claim by an administrative law judge. Director's Exhibits 3, 13.

<sup>2</sup> The miner's coal mine employment was in West Virginia. Director's Exhibit 7. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer argues that retroactive application of amended Section 932(l) is unconstitutional, as it violates employer’s due process rights and constitutes an unlawful taking of employer’s property, in violation of the Fifth Amendment to the United States Constitution. Employer’s Brief at 5-15. Employer also renews its contention that the operative date for determining eligibility pursuant to amended Section 932(l) is the date the miner’s claim was filed, not the date the survivor’s claim was filed. Employer’s Brief at 16-19. Further, employer asserts that this case should be held in abeyance pending resolution of the constitutional challenges to Public Law No. 111-148 and the proper interpretation of amended Section 932(l) in federal court. Employer’s Brief at 20-27. Employer’s arguments lack merit.

Initially, we reject employer’s contentions 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. We 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 Keene v. Consolidation Coal Co.*, 645 F.3d 844, 24 BLR 2-385 (7th Cir. 2011). We therefore reject them here for the reasons set forth in *Mathews*. Further, we recently held that 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. *Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011). For the reasons set forth in *Stacy*, we reject employer’s arguments to the contrary. Finally, employer’s request that this case be held in abeyance pending resolution of the legal challenge to Public Law No. 111-148 and interpretation of amended Section 932(l) is also denied. *See Mathews*, 24 BLR at 1-201.

Consequently, we affirm the administrative law judge’s determination that claimant is derivatively entitled to benefits pursuant to amended Section 932(l), as she filed her survivor’s claim after January 1, 2005, the claim was pending on March 23, 2010, and the miner was determined to be eligible to receive benefits at the time of his death. 30 U.S.C. §932(l); Pub. L. No. 111-148, §1556(b), (c).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge