

BRB No. 11-0243 BLA

NORMA J. MARTIN)	
(Widow of CURTISS W. MARTIN))	
)	
Claimant-Respondent)	
)	
v.)	
)	
PATIENCE INCORPORATED)	DATE ISSUED: 10/27/2011
)	
and)	
)	
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 – Awarding Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (David Huffman Law Services), Parkersburg, West Virginia, for claimant.

Ashley M. Harman and Amy Jo Holley (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Sarah M. Hurley (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 – Awarding Benefits (2010-BLA-5701) of Administrative Law Judge Michael P. Lesniak, rendered on a survivor’s claim filed on October 7, 2009, 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).¹ On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005 and pending on March 23, 2010, were adopted. Relevant to this survivor’s claim, amended Section 932(l) of the Act provides that the 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.

Subsequent to the enactment of the amendments, the district director instructed the parties to show cause as to why benefits should not be awarded in the survivor’s claim, based upon the award of benefits in the miner’s claim. Claimant responded and asserted that the amendments were applicable to her claim, thereby automatically entitling her to benefits. Employer acknowledged that the amendments affect the survivor’s claim, but argued that this case should be held in abeyance until the Department of Labor (DOL) promulgates regulations implementing the amendments and the constitutional challenges to Public Law Number 111-148 are finally decided.

The district director subsequently issued a Proposed Decision and Order Awarding Benefits. Employer requested a formal hearing, but before the hearing was held, claimant filed a Motion for Summary Judgment and argued that she is derivatively entitled to benefits pursuant to amended Section 932(l). Employer opposed claimant’s Motion and maintained that the amendments to the Act are unconstitutional, and that the date on which the miner’s claim was filed is the date relevant to the applicability of amended Section 932(l). The Director, Office of Workers’ Compensation Programs (the Director), responded and requested that the administrative law judge issue a Decision and Order awarding benefits.

In his Summary Decision, the administrative law judge acknowledged that claimant is a dependent survivor of the miner, that the miner was finally awarded benefits in a lifetime claim, and that claimant was not required to independently establish that the

¹ Claimant is the surviving spouse of the miner, Curtiss W. Martin, who died on August 27, 2009. Director’s Exhibits 7-8. At the time of his death, the miner was receiving federal black lung benefits pursuant to an award of benefits issued by Administrative Law Judge Gerald M. Tierney on October 16, 2002. Director’s Exhibit 20. The Board affirmed the award of benefits and employer did not appeal that decision. *Martin v. Patience, Inc.*, BRB No. 03-0186 BLA (Sept. 10, 2003) (unpub.).

miner's death was due to pneumoconiosis in light of amended Section 932(l). Citing *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-198-200 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011) (unpub. Order), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011), the administrative law judge also rejected employer's argument that the date of filing of the miner's claim was the relevant filing date. The administrative law judge further determined that he would not adjudicate employer's constitutional challenges, but that they would be preserved for appeal. Because claimant satisfied the eligibility criteria for derivative entitlement to benefits pursuant to amended Section 932(l), the administrative law judge awarded benefits effective August 2009, the month in which the miner died.

On appeal, employer reiterates the arguments that it raised before the administrative law judge and requests that this case be held in abeyance until the constitutional challenges to Public Law Number 111-148, and the appeal of the Board's decision in *Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011), are finally decided. Claimant and the Director respond, urging affirmance of the award of benefits.²

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.³ 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's arguments regarding the constitutionality of the amendments, as applied in this case, are without merit. Employer's contentions are virtually identical to those that the Board rejected in *Mathews*. We, therefore, reject them here for the reasons set forth in that decision. *Mathews*, 24 BLR at 1-198-200; *see also Stacy*, 24 BLR at 1-214.

In addition, we hold that there is no merit in employer's contention that the date of filing of the miner's claim is the operative date for determining whether amended Section 932(l) applies to the survivor's claim. The Board has held that the operative date for

² We affirm, as unchallenged by the parties on appeal, the administrative law judge's finding that claimant meets the eligibility criteria of amended 30 U.S.C. 932(l). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Summary Decision at 2.

³ The record reflects that the miner's coal mine employment was in Virginia. Director's Exhibit 1. 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 (1989) (*en banc*).

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*, 24 BLR at 1-211. We further deny employer's request that this case be held in abeyance pending resolution of the legal challenges to Public Law Number 111-148 in the federal courts. *See Mathews*, 24 BLR at 1-200; *Fairman v. Helen Mining Co.*, 24 BLR 1-227, 1-229 (2011). We also deny employer's request that this case be held in abeyance until the United States Court of Appeals for the Fourth Circuit resolves the appeal of the Board's decision in *Stacy*.

Because we have affirmed, based on the arguments presented, the administrative law judge's findings that claimant filed her claim after January 1, 2005, that it was pending on March 23, 2010, that claimant is an eligible survivor of the miner, and that the miner was awarded benefits on a lifetime claim, we affirm the administrative law judge's determination that claimant is derivatively entitled to benefits pursuant to amended Section 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