

BRB No. 10-0488 BLA

GLADYS I. BRAHAM)
(Widow of JAMES T. BRAHAM))
)
Claimant-Respondent)
)
v.)
)
T & T FUELS, INCORPORATED)
)
and)
)
WEST VIRGINIA COAL WORKERS') DATE ISSUED: 04/26/2011
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 Decision and Order - Awarding Benefits of Daniel L. Leland,
Administrative Law Judge, United States Department of Labor.

C. Matt Rollins, Morgantown, West Virginia, for claimant.

Allison B. Moreman (Jackson Kelly PLLC), Lexington, Kentucky, for
employer/carrier.

Emily Goldberg-Kraft (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
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order - Awarding Benefits (2010-BLA-5036) of Administrative Law Judge Daniel L. Leland rendered on a survivor's claim¹ 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). The relevant procedural history of this case is as follows.

Prior to the scheduled hearing, by Order dated April 8, 2010, the administrative law judge provided the parties with the opportunity to address the impact on this case, if any, of Section 1556 of Public Law No. 111-148, which amended the Act with respect to the entitlement criteria for certain claims filed after January 1, 2005. The amendments, in pertinent part, revived Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that an eligible survivor of a miner who was receiving 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). Employer argued that retroactive application of Public Law No. 111-148 is unconstitutional, conflicts with other provisions of the Act, and violates the Administrative Procedure Act (APA), 5 U.S.C. §§554, 556, 557, as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). Employer further asserted that, even if the amendments are constitutional, they do not apply to this claim, as the miner's claim was not filed after January 1, 2005. The Director, Office of Workers' Compensation Programs (the Director), moved for a summary decision, asserting that, pursuant to amended Section 932(l), claimant is automatically entitled to benefits as a matter of law, and that there is no genuine issue as to any material fact concerning her entitlement. Claimant agreed with the Director that she is automatically entitled to benefits under amended Section 422(l), 30 U.S.C. §932(l).

In a decision dated May 3, 2010, the administrative law judge initially noted that the miner was receiving benefits at the time of his death, pursuant to the March 28, 1997 award of benefits of Administrative Law Judge Michael P. Lesniak,² and that claimant filed her survivor's claim on December 20, 2006. After considering the parties' arguments regarding the applicability of amended Section 932(l), the administrative law judge found that claimant met the eligibility criteria for automatic entitlement to benefits. Accordingly, the administrative law judge awarded benefits in this survivor's claim, and

¹ Claimant is the widow of the miner, who died on December 1, 2006. Director's Exhibit 11.

² The Board affirmed the award of benefits in the miner's claim on March 31, 1998. *Braham v. T & T Fuels, Inc.*, BRB No. 97-1009 BLA (Mar. 31, 1998)(unpub.).

canceled the hearing. Decision and Order at 2-3.

On appeal, employer challenges the administrative law judge's application of amended Section 932(*l*) to this case. Employer further asserts that an award of benefits is not supported by the medical evidence of record. Claimant and the Director respond, urging affirmance of the administrative law judge's award of benefits. Employer filed a reply brief reiterating its contentions.

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 specifically asserts that retroactive application of the amendments is unconstitutional, as it violates employer's due process rights and would constitute an unlawful taking of employer's property, in violation of the Fifth Amendment to the United States Constitution. Employer's Brief at 12-16. Employer also 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. Employer's Brief at 4. Further, employer asserts that this case should be held in abeyance until sixty days after the Department of Labor (DOL) issues guidelines or promulgates regulations implementing 30 U.S.C. §932(*l*), as amended, and made applicable by Section 1556 of Public Law No. 111-148. Employer's Brief at 22. Employer also argues that, because the constitutionality of Public Law No. 111-148 was challenged in a lawsuit filed in the United States District Court for the Northern District of Florida, this case should be held in abeyance. Employer's Brief at 22. Employer's arguments lack merit.

As the administrative law judge correctly noted, the recent amendments, in pertinent part, revive Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides that an 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*); Decision and Order at 2. In a recent case, the Board held that the operative date for determining eligibility for survivors' 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.*, BLR , BRB No. 10-0113 BLA, slip op. at 7 (Dec. 22, 2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011). Specifically, the Board held that, under amended Section 932(*l*), an eligible survivor who files a claim after January 1, 2005, that is pending on or after the March 23, 2010 effective date of the Section 1556 amendments, is entitled to benefits based solely on the miner's lifetime award, without having to prove

that the miner died due to pneumoconiosis. *Stacy*, slip op. at 7; see 30 U.S.C. §932(l); Decision and Order at 2-3. Therefore, because claimant filed her survivor's claim after January 1, 2005, her claim was pending on March 23, 2010, and the miner was awarded benefits on his claim, we hold that the administrative law judge properly found that Section 932(l) applies to this case. *Stacy*, slip op. at 7.

We also reject employer's arguments regarding the constitutionality of the amendments, as applied to this case. The arguments made by employer are identical to the ones that the Board rejected in *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-198-200 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011) (Order) (unpub.). We, therefore, reject them here for the reasons set forth in that case. *Mathews*, 24 BLR at 1-198-200; see also *Stacy*, slip op. at 8.

Further, as we did in *Mathews*, we reject employer's request that this case be held in abeyance until sixty days after DOL issues guidelines or promulgates regulations implementing amended Section 932(l). As we noted in *Mathews*, the mandatory language of amended Section 932(l) supports the conclusion that the provision is self-executing, and, therefore, that there is no need to hold this case in abeyance pending the promulgation of new regulations. *Mathews*, 24 BLR at 1-201. Finally, employer's request, that this case be held in abeyance pending resolution of the legal challenge to Public Law No. 111-148, 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 422(l) of the Act, 30 U.S.C. §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. We also affirm the administrative law judge's determination to cancel the hearing. Decision and Order at 3. The Act and regulations mandate that an administrative law judge hold a hearing on any claim, including a request for modification filed with the district director, whenever a party requests such a hearing, unless such hearing is waived by the parties or a party requests summary judgment pursuant to 20 C.F.R. §725.452.³ *Pukas v. Schuylkill Contracting Co.*, 22 BLR 1-69, 1-

³ Section 725.452(c) provides:

A full evidentiary hearing need not be conducted if a party moves for summary judgment and the administrative law judge determines that there is no genuine issue as to any material fact and that the moving party is entitled to the relief requested as a matter of law. All parties shall be entitled to respond to the motion for summary judgment prior to decision thereon.

72 (2000). Here, the Director moved for summary judgment, and the administrative law judge determined, as the Director asserted, that claimant is entitled to benefits as a matter of law. *See* 20 C.F.R. §725.452(c). Thus, the administrative law judge did not err when he canceled the hearing. *See Pukas*, 22 BLR at 1-72.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge