

BRB No. 10-0523 BLA

DORTHA BOWMAN)	
(Widow of RALPH BOWMAN))	
)	
Claimant-Respondent)	
)	
v.)	
)	
RELIABLE COAL CORPORATION)	
)	
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.

Heath M. Long (Pawlowski, Blonick & Long), Ebensburg, Pennsylvania, for claimant.

Karin L. Weingart (Spilman, Thomas & Battle, PLLC) Charleston, West Virginia, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (2010-BLA-05017) of Administrative Law Judge Daniel L. Leland (the administrative law judge) on a survivor’s claim filed pursuant to the provisions of 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 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 422 (l) of the Act, 30 U.S.C. §932(l), which 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. 30 U.S.C. §932(l).

On April 8, 2010, the administrative law judge advised the parties of the possible applicability of the amendments to this claim, and issued an order directing the parties to submit position statements. In response, claimant² asserted that she was automatically entitled to benefits. The Director, Office of Workers’ Compensation Programs (the Director), filed a Motion for Summary Decision, agreeing with claimant that under amended Section 932(l), and given the filing date of her claim, claimant was entitled to benefits based on the award to her deceased husband. Employer responded, conceding that claimant was ostensibly entitled to benefits, but challenging the constitutionality of the amendments. Employer also objected to the application of new law to this claim before regulations implementing the legislation were enacted, and requested that the case be held in abeyance until the enactment of implementing regulations. The administrative

¹ The recent amendments to the Act apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Pub. L. No. 111-148, §1556(c), 124 Stat. 119 (2010). Section 1556 of Public Law No. 111-148 amended Section 422(l) of the Act, to provide that a qualified survivor is automatically entitled to benefits without having to establish that the miner’s death was due to pneumoconiosis, if the miner filed a successful claim and was receiving benefits at the time of his death. 30 U.S.C. §932(l), amended by Pub. L. No. 111-148, §1556(c), 124 Stat. 119 (2010)(to be codified at 30 U.S.C §932(l)).

² Claimant is the widow of the miner, who was receiving federal black lung benefits at the time of his death pursuant to a final award issued by Administrative Law Judge Michael P. Lesniak on July 21, 1993. The miner died on October 15, 2008, and claimant filed a claim for survivor’s benefits on October 24, 2008, on her own behalf and on behalf of her adult disabled daughter. Director’s Exhibits 2, 19.

law judge rejected employer's arguments, finding that amended Section 932(l) was applicable and that claimant was automatically entitled to survivor's benefits. Accordingly, benefits were awarded.

On appeal, employer argues that the retroactive application of the automatic entitlement provisions of amended Section 932(l) to claims filed after January 1, 2005 constitutes a violation of its due process rights. Alternatively, employer argues that further proceedings or actions related to this claim should be stayed until there is a resolution of the constitutional challenges pending in federal court. Claimant and the Director respond, 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. 33 U.S.C. §921 (b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

We reject employer's contention that the retroactive application of the automatic entitlement provisions of amended Section 932(l) to claims filed after January 1, 2005 constitutes "a due process violation," Employer's Brief at 3-7, for the same reasons the Board rejected this same argument in *Mathews v. Pocahontas Coal Co.*, 24 BLR 1-193, 1-200 (2010). We also deny employer's request to hold this case in abeyance until resolution of the challenge to the constitutionality of Public Law No. 111-148 in federal court, for the same reasons set forth in *Mathews*, 24 BLR at 1-201. Because claimant filed her claim after January 1, 2005, the claim was pending on March 23, 2010, and the miner was receiving benefits under a final award at the time of his death, we affirm the administrative law judge's finding that claim is derivatively entitled to survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l).

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