

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

McCoy Elkhorn Coal Corp. v. Dotson

714 F.3d 945 (6th Cir. 2013) · No. 12-3037 · Decided May 3, 2013

SUMMARY

The Sixth Circuit denied McCoy Elkhorn Coal Corporation's petition for rehearing concerning the commencement date for survivor benefits under the Black Lung Benefits Act. The court held that 20 C.F.R. § 725.503(c) clearly provides that survivor benefits begin in the month of the miner's death, rejecting arguments based on constitutional avoidance and due process. The court distinguished the commencement rule for miner benefits, which may begin in the month the claim is filed.

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	Siler; Sutton; McKeague
JURISDICTION	Federal
DECIDED	May 3, 2013
DOCKET	12-3037
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for rehearing following the court's denial of a petition for review of a Benefits Review Board decision awarding survivor's benefits under the Black Lung Benefits Act.
PRECEDENTIAL VALUE	Published opinion recommended for full-text publication
PARTIES	McCoy Elkhorn Coal Corporation, James River Coal Company v. Vernie Dotson, Director, Office of Workers' Compensation Programs

TOPICS

appellate procedure

administrative law

judicial review of agency action

statutory interpretation

substantive due process

PRACTICE AREAS

administrative law

black lung benefits

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether survivor benefits under the 2010 Black Lung Amendments should commence in the month of the miner's death under 20 C.F.R. § 725.503(c).
2. Whether applying the regulation to require benefits beginning in August 1998 would impose unconstitutional retroactive liability in violation of substantive due process.
3. Whether survivor benefits should instead commence on January 1, 2005, or the month the survivor filed the claim.

HOLDINGS

1. Under 20 C.F.R. § 725.503(c), survivor benefits are payable beginning with the month of the miner's death, unless January 1, 1974, is later; for Vernie Dotson, the commencement date was August 1998.
2. Applying the survivor-benefit commencement rule to require benefits beginning in the month of the miner's death does not violate substantive due process merely because it imposes retroactive liability on a coal operator.
3. Neither January 1, 2005, nor January 2006, the month Vernie Dotson filed her claim, was the proper commencement date for survivor benefits.

KEY QUOTATIONS

“This language was clear before Congress enacted the Black Lung Amendments, and it remains so today.”
(Page 2)

“What matters is that this is not the date Congress selected.” (Page 2)

FACTUAL BACKGROUND

Willie Dotson died in August 1998, and an administrative law judge determined that his wife, Vernie Dotson, was entitled to survivor's benefits. McCoy Elkhorn argued that benefits should commence on a later date because applying the regulation's August 1998 commencement date would impose retroactive liability and violate substantive due process. The court held that 20 C.F.R. § 725.503(c) required survivor benefits to begin in the month of the miner's death.

PROCEDURAL HISTORY

An administrative law judge determined that Vernie Dotson was entitled to survivor's benefits following the death of miner Willie Dotson. The Benefits Review Board entered an order concerning the award, and McCoy Elkhorn petitioned the Sixth Circuit for review. The court denied review based on *Vision Processing, LLC v. Groves*, then denied McCoy Elkhorn's petition for rehearing because the survivor-benefit commencement date was governed by 20 C.F.R. § 725.503(c).

DISPOSITION

writ_denied

CASES CITED

- Vision Processing, LLC v. Groves, 705 F.3d 551, 558 (6th Cir. 2013)
- Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 18 (1976)

OPINION

PER CURIAM.

RECOMMENDED FOR FULL-TEXT PUBLICATION Pursuant to Sixth Circuit I.O.P. 32.1(b)
 File Name: 13a0125p.06 UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
 _____ X MCCOY ELKHORN COAL CORPORATION; Petitioners, -- JAMES
 RIVER COAL COMPANY, No. 12-3037 > v. VERNIE DOTSON; DIRECTOR, OFFICE OF
 WORKERS' COMPENSATION PROGRAMS, Respondents. N UNITED STATES, On Petition
 for Review of an Order of the Benefits Review Board, United States Department of Labor.

No. BRB 10-0706. Decided and Filed: May 3, 2013 Before: SILER, SUTTON, and McKEAGUE,
 Circuit Judges. _____ ORDER _____ On February 1, 2013, this
 court issued an order denying McCoy Elkhorn Coal Corporation's petition for review of a decision
 of the Benefits Review Board based on Vision Processing, LLC v. Groves, 705 F.3d 551 (6th Cir.

2013). McCoy Elkhorn filed a petition for rehearing, arguing that its case involved additional
 issues not addressed in Vision Processing, namely whether an award of benefits under the 2010
 Black Lung Amendments, Pub. L. No. 111-148, § 1556(a)–(c), should commence the month the
 miner died.

For the reasons that follow, we deny the petition for rehearing. The relevant regulation says:
 “Benefits are payable to a survivor who is entitled beginning with the month of the miner's death,
 or January 1, 1974, whichever is later.” 20 C.F.R. § 725.503(c). This language was clear before
 Congress enacted the Black 1 No. 12-3037 McCoy Elkhorn Coal Corp., et al. v. Dotson, et al.
 Page 2 Lung Amendments, and it remains so today.

Willie Dotson died in August 1998. An administrative law judge determined that his wife, Vernie,
 was entitled to survivor's benefits. By the terms of § 725.503(c), Vernie is “entitled [to benefits]
 beginning with the month of the miner's death”: August 1998. Invoking the constitutional-
 avoidance canon, Elkhorn argues that this reading of the regulation would impose retroactive
 liability on the company in violation of due process, and as a result it urges us to read the
 regulation differently to avoid this pitfall.

There is no pitfall. We addressed, and rejected, a similar argument in Vision Processing: Vision
 Processing adds that allowing the 2010 amendments to operate retroactively would violate
 substantive due process. The Supreme Court has rejected a similar argument before—in the
 context of the Black Lung Benefits Act no less. Usery considered whether the Act, as originally
 enacted, violated due process because it imposed retroactive liability on coal mine operators.

In upholding the statute, the Court explained that “the imposition of liability for the effects of disabilities bred in the past is justified as a rational measure to spread the costs of the employees’ disabilities to those who have profited from the fruits of their labor—the operators and the coal consumers.” 705 F.3d at 558 (quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 18 (1976)) (citation omitted).

Mining a similar vein, Elkhorn contends that January 1, 2005, the date mentioned in § 1556(c) of the Black Lung Amendments, would be a more rational commencement date, given that Congress already highlighted that date as a dividing line for employer liability. Perhaps as a matter of policy January 1 would have made sense as a start date; perhaps not. What matters is that this is not the date Congress selected.

Congress made no mention of when an award of survivor benefits should commence when it enacted the Black Lung Amendments. That leaves us with the preexisting regulation, which is still in place and which still governs survivor-benefits applications like this one. Elkhorn proposes one other commencement date: January 2006, the month Vernie Dotson filed her survivor claim.

It is true that living-miner benefits become payable the month the miner files the claim. As 20 C.F.R. § 725.503(b) explains, No. 12-3037 *McCoy Elkhorn Coal Corp., et al. v. Dotson, et al.* Page 3 “benefits shall be payable to [a] miner beginning with the month during which the claim was filed” “[w]here the evidence does not establish the month of onset.” The problem is, Vernie Dotson is seeking survivor benefits, and as just shown they have a different trigger date under 20 C.F.R. § 725.503(c).

For these reasons, the petition for rehearing is denied. ENTERED BY ORDER OF THE COURT
/s/ Deborah S. Hunt _____ Clerk