

U.S. Department of Labor

Benefits Review Board  
200 Constitution Ave. NW  
Washington, DC 20210-0001



BRB No. 25-0130 BLA

JUANITA SHELTON )  
(Widow of JOSEPH R. SHELTON) )  
 )  
Claimant-Respondent )

v. )

**NOT-PUBLISHED**

GARDEN CREEK POCAHONTAS )  
COMPANY )  
 )  
Self-Insured Employer- )  
Petitioner )

DATE ISSUED: 04/14/2026

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
Party-in-Interest )

DECISION and ORDER

Appeal of the Decision and Order Awarding Survivor's Benefits and Denying Employer's Motion to Hold Claim in Abeyance of Deirdra M. Howard, Administrative Law Judge, United States Department of Labor.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

Kathleen H. Kim (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Deirdra M. Howard’s Decision and Order Awarding Survivor’s Benefits and Denying Employer’s Motion to Hold Claim in Abeyance (2024-BLA-05962) rendered on a survivor’s claim filed on August 8, 2024,<sup>1</sup> pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ determined that because the Miner was found eligible to receive benefits at the time of his death,<sup>2</sup> Claimant is automatically entitled to survivor’s benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*).<sup>3</sup> Thus, the ALJ declined to hold the survivor’s claim in abeyance and awarded benefits.<sup>4</sup>

On appeal, Employer argues the ALJ failed to adequately address its motion to hold the survivor’s claim in abeyance pending a final decision in the miner’s claim. It further argues she erred in awarding Claimant survivor’s benefits under Section 422(*l*) because the miner’s claim was pending on appeal before the Board and therefore was not final and effective. Claimant did not file a response brief. The Director, Office of Workers’ Compensation Programs (the Director), responds, urging the Board to reject Employer’s arguments.

The Board’s scope of review is defined by statute. We must affirm the ALJ’s Decision and Order if it is rational, supported by substantial evidence, and in accordance

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<sup>1</sup> Claimant is the widow of the Miner, who died on July 14, 2024. Director’s Exhibits 4, 5.

<sup>2</sup> The ALJ awarded benefits in the miner’s claim on February 29, 2024. *Shelton v. Garden Creek Pocahontas Co.*, OALJ No. 2021-BLA-06041 (Feb. 29, 2024). The Miner died while Employer’s appeal of his claim was pending before the Benefits Review Board, and Claimant pursued the claim on behalf of the Miner’s estate. Upon review of Employer’s appeal, the Board affirmed the ALJ’s award of benefits in the miner’s claim. *Shelton v. Garden Creek Pocahontas Co.*, BRB No. 24-0229 BLA, slip op. at 13 (June 24, 2025) (unpub.).

<sup>3</sup> Under Section 422(*l*) of the Act, a survivor of a miner who was determined to be *eligible* to receive benefits at the time of his death is automatically entitled to survivor’s benefits without having to establish the miner’s death was due to pneumoconiosis. 30 U.S.C. §932(*l*).

<sup>4</sup> On December 4, 2025, Employer filed a Response to Show Cause Order and Motion to Hold Survivor’s Claim in Abeyance. In her Decision and Order Awarding Survivor’s Benefits, the ALJ simultaneously issued an Order Denying Employer’s Motion to Hold Claim in Abeyance. Decision and Order at 3.

with applicable law.<sup>5</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Considering whether Claimant is entitled to benefits under Section 422(l), the ALJ found Claimant satisfied her burden to establish each fact necessary to demonstrate entitlement under Section 422(l) of the Act: she filed her claim after January 1, 2005; she is an eligible survivor of the Miner; her claim was pending on or after 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); see 20 C.F.R. §725.212(a); Decision and Order at 3; Director’s Exhibits 3-5; *Shelton v. Garden Creek Pocahontas Co.*, OALJ No. 2021-BLA-06041 (Feb. 29, 2024) (unpub.).

Employer contends the ALJ erred in failing to address its motion to hold the claim in abeyance until a final decision could be made in the miner’s claim. Employer’s Brief at 5-7. It also contends the ALJ erred in finding Claimant is derivatively entitled to survivor’s benefits pursuant to Section 422(l) because the award of benefits in the miner’s claim was not yet final or effective. *Id.* at 7-9.

We initially note an award of benefits in a miner’s claim need not be final nor effective for a claimant to receive survivor’s benefits under Section 422(l). See *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141, 1-145-47 (2014). Moreover, subsequent to Employer’s filing of its brief in the present appeal, the Board affirmed the ALJ’s decision awarding benefits in the miner’s claim and finding Employer liable for those benefits. *Shelton v. Garden Creek Pocahontas Co.*, BRB No. 24-0229 BLA (June 24, 2025) (unpub.). Therefore, Employer’s contentions that the ALJ erred in awarding automatic survivor’s benefits and that she should have held the survivor’s claim in abeyance are moot. Employer’s Brief at 5-9.

The ALJ found Claimant established each element necessary to demonstrate entitlement under Section 422(l) of the Act. 30 U.S.C. §932(l); Decision and Order at 3. Because the Board previously affirmed the award of benefits in the miner’s claim and Employer raises no additional challenges to the award of benefits in the survivor’s claim, we affirm it. 30 U.S.C. §932(l); see *Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

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<sup>5</sup> The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); *Shelton*, BRB No. 24-0229 BLA, slip op. at 3 n.3.

Accordingly, we affirm the ALJ's Decision and Order Awarding Survivor's Benefits and Denying Employer's Motion to Hold Claim in Abeyance.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge