



BRB No. 23-0085 BLA

JANICE H. GRIFFITH)
(Widow of THOMAS H. GRIFFITH))

Claimant-Respondent)

v.)

VIRGINIA POCAHONTAS COMPANY)

DATE ISSUED: 8/23/2023

Employer-Petitioner)

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 in Survivor’s Claim Based on Automatic Entitlement and Order Denying Motion to Hold Survivor’s Claim in Abeyance of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe, Donna E. Sonner, and Cameron Blair (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Jason A. Mullins and John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

Sarah M. Hurley (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, 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, BOGGS and JONES,
Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits in Survivor's Claim Based on Automatic Entitlement and Order Denying Motion to Hold Survivor's Claim in Abeyance (2022-BLA-05847) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a survivor's claim filed on June 6, 2022.¹

The ALJ determined that because the Miner was found eligible to receive benefits at the time of his death,² Claimant is automatically entitled to survivor's benefits under Section 422(l) of the Act, 30 U.S.C. §932(l) (2018).³ Thus, the ALJ awarded benefits.

On appeal, Employer argues the ALJ erred in awarding Claimant survivor's benefits under Section 422(l) because the miner's claim was pending on appeal before the Board and was not final at that time. It further argues the Board should hold the claim in abeyance pending the outcome of the miner's claim.⁴ Claimant and the Director, Office of Workers' Compensation Programs, respond in support of the award of benefits.

¹ Claimant is the widow of the Miner, who died on May 1, 2022. Director's Exhibits 4, 5. Claimant pursued the miner's claim on behalf of her husband's estate and her survivor's claim separately. Director's Exhibit 2.

² ALJ Susan Hoffman awarded benefits in the miner's claim on September 3, 2021. *Griffith v. Virginia Pocahontas Co.*, Case No. 2019-BLA-05347 (Sep. 3, 2021). Employer appealed the award of benefits in the miner's claim to the Benefits Review Board. The Miner died while his claim was pending before the Board. Director's Exhibits 5. The Board affirmed the award. *Griffith v. Virginia Pocahontas Co.*, BRB No. 21-0648 BLA (June 26, 2023) (unpub.).

³ 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) (2018).

⁴ On January 5, 2023, Employer requested the Board stay the payment of benefits in the survivor's claim. Employer's January 5, 2023 Motion to Stay. The Board denied

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 with applicable law.⁵ 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).

Initially, we 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 ALJ Hoffman's decision awarding benefits in the miner's claim and finding Employer is liable for benefits. *Griffith v. Virginia Pocahontas Co.*, BRB No. 21-0648 BLA (June 26, 2023) (unpub.). Therefore, Employer's contentions that the ALJ erred in awarding automatic survivor's benefits and that we should hold the claim in abeyance because the miner's claim was pending before the Board are moot. Employer's Brief at 6-8 (unpaginated).

The ALJ found Claimant established each element 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); Decision and Order at 2-3. Because we 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).

the motion on January 31, 2023. *Griffith v. Virginia Pocahontas Co.*, BRB No. 23-0085 BLA (Jan. 31, 2023) (Order) (unpub.).

⁵ The Board will apply the law of United States Court of Appeals for the Fourth Circuit because the Miner performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); *Griffith*, BRB No. 21-0648 BLA, slip op. at 3 n.6.

Accordingly, the ALJ's Decision and Order Awarding Benefits in Survivor's Claim Based on Automatic Entitlement and Order Denying Motion to Hold Survivor's Claim in Abeyance are affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge