



BRB No. 24-0237 BLA

VIRGINIA STRAWSER, survivor of)	NOT-PUBLISHED
RICHARD STRAWSER,)	
)	
Claimant-Respondent)	
)	
v.)	
)	
POTOMAC COAL COMPANY c/o)	
CONSOL ENERGY INCORPORATED)	
)	
and)	
CONSOL ENERGY INCORPORATED c/o)	
SMARTY CAUSALTY CLAIMS)	
)	
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 Survivor Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawlowski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

Jeffrey S. Goldberg (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for

Administrative Appeals), Washington, D.C., for the Acting 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) Drew A. Swank's Decision and Order Awarding Survivor Benefits (2022-BLA-05815) rendered on a survivor's claim¹ filed on January 13, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The district director awarded benefits pursuant to 30 U.S.C. §932(l), which provides for automatic entitlement to survivor's benefits in cases where the miner was determined to have been eligible for benefits at the time of his death. Employer refused to pay benefits on several grounds, including its assertion that Section 932(l) did not apply because the miner's claim was not "final" as it was still pending before the Office of Administrative Law Judges (OALJ). Director's Exhibit 8 at 1. Employer requested a hearing in the survivor's claim and the case was forwarded to the OALJ.

On October 25, 2022, the ALJ *sua sponte* placed this survivor's claim in abeyance pending the Benefit Review Board's review on appeal of an ALJ's award in the miner's claim. After the Board affirmed the award of benefits in the miner's claim, *see Strawser v. Potomac Coal Co.*, BRB No. 22-0344 BLA (Sep. 23, 2023) (unpub.), the ALJ issued his Decision and Order in the survivor's claim and found Claimant satisfied her burden to establish each fact necessary to demonstrate her entitlement under Section 932(l): that she filed her claim after January 1, 2005; that she is an eligible survivor of the Miner; that her claim was pending after March 23, 2010; and that the Miner had been determined to be eligible to receive benefits at the time of his death. *See* 30 U.S.C. §932(l); Decision and Order at 2-3. Accordingly, the ALJ found Claimant is derivatively entitled to survivor's benefits pursuant to Section 932(l).

Employer appealed the ALJ's derivative award in the survivor's claim to the Board on March 28, 2024. On June 10, 2024, after requesting and being granted an extension of time to file a petition for review and brief, but prior to doing so, Employer filed a Motion to Hold Claim and Briefing in Abeyance Pending Decision. Specifically, Employer argued Claimant's derivative entitlement survivor's claim is unripe for final adjudication because

¹ Claimant is the widow of the Miner, who died on December 6, 2021. Director's Exhibit 4.

it is predicated on the Miner’s lifetime award and the miner’s claim at that time was pending before the United States Court of Appeals for the Fourth Circuit pursuant to Employer’s appeal. On February 24, 2025, the Board denied Employer’s motion, stating Employer “provided no compelling reason to hold this case in abeyance” and ordering Employer to file its Petition for Review and brief in the survivor’s claim within ten days of receipt of the Board’s Order.

On March 7, 2025, Employer filed its Petition for Review and brief, arguing the Board should dismiss Claimant’s survivor’s claim as “moot” for lack of a “justiciable controversy.” Employer’s Brief at 3. Claimant and the Acting Director, Office of Workers’ Compensation Programs, respond in support of the award of benefits.

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.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Assoc., Inc.*, 380 U.S. 359, 361-62 (1965).

Employer argues Claimant’s survivor’s claim for derivative benefits is “moot” and should be dismissed for lack of a justiciable controversy because the ALJ awarded benefits based on the Act’s derivative entitlement provisions under 30 U.S.C. §932(l). Employer’s Brief at 4. In support, Employer explains: 1) Claimant need not have filed a new claim because she “is already entitled to all due benefits based on the award in the miner’s claim;” and 2) “[n]ot dismissing the unnecessary survivor’s claim as moot would require the aggrieved party to file and pay a filing fee before the Circuit Court to hold this matter in abeyance pending the resolution of the miner’s claim.” *Id.* at 4-5. We reject Employer’s arguments.

The fact that a survivor’s entitlement to benefits is derivative of a miner’s award does not render the survivor’s claim moot or otherwise non-justiciable. Survivor’s and miner’s claims are distinct proceedings governed by different eligibility criteria. *See, e.g.*, 20 C.F.R. §§725.202, 725.212, 725.218, 725.222. While a surviving spouse may be derivatively entitled to survivor’s benefits based on the miner’s eligibility to benefits at the time of his death, a Section 932(l) award for survivor’s benefits is not self-executing. A survivor must still file a separate claim and establish her status as an eligible survivor. *See* 30 U.S.C. §932(l); 20 C.F.R. §725.212(a);³ *CWP Fund v. Stacy*, 671 F.3d 378, 379 (4th

² This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the Miner performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Miner’s Claim Director’s Exhibit 3.

³ The plain language of 20 C.F.R. §725.212(a) specifically states:

Cir. 2011) (Section 932(l) relieves eligible survivors of the obligation of proving that a miner died from pneumoconiosis; however, survivors must still file a claim to notify the Office of Workers' Compensation Programs of the miner's death and the survivor's current status). Moreover, the pendency of Employer's appeal in the related miner's claim does affect the justiciability of Claimant's derivative survivor's claim.⁴ *See Rothwell v. Heritage Coal Co.*, 25 BLR 1-141, 1-145-47 (2014) (a final or effective award in the miner's claim is not a prerequisite to derivative entitlement under Section 932(l)). We therefore reject Employer's characterization of the survivor's claim as inherently "moot," "unnecessary," or unripe. Because Employer's appeal of the ALJ's award of survivor's benefits presents a live controversy over a final agency decision, it is properly before the Board. 20 C.F.R. §802.301.

As the ALJ found Claimant satisfied each requirement for entitlement under Section 932(l), and Employer has not identified any error in those findings, we affirm the award of survivor's benefits. 30 U.S.C. §932(l); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

An individual who is the surviving spouse or surviving divorced spouse of a miner is eligible for benefits if such individual:

- (1) Is not married;
- (2) Was dependent on the miner at the pertinent time; and
- (3) The deceased miner either:
 - (i) Is determined to have died due to pneumoconiosis; or
 - (ii) Filed a claim for benefits on or after January 1, 1982, which results or resulted in a final award of benefits, and *the surviving spouse or surviving divorced spouse filed a claim for benefits* after January 1, 2005 which was pending on or after March 23, 2010.

20 C.F.R. §725.212(a) (emphasis added).

⁴ We note Employer's assertions to the contrary are now moot as the Fourth Circuit has affirmed the award of benefits in the miner's claim. *Potomac Coal Co. v. Director, OWCP*, No. 23-2207 (4th Cir. Aug. 6, 2025).

Accordingly, we affirm the ALJ's Decision and Order Awarding Survivor Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge