



BRB No. 22-0526 BLA

MARY S. ISON)
(Survivor of ROGER D. ISON))

Claimant-Respondent)

v.)

ARCH OF KENTUCKY/APOGEE COAL)
COMPANY)

and)

ARCH RESOURCES, INCORPORATED)

Employer/Carrier-)
Petitioners)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED: 6/16/2023

DECISION and ORDER

Appeal of the Decision and Order Awarding Continuing Benefits under the Automatic Entitlement Provision of the Black Lung Benefits Act, Denying Employer's Motion for Summary Judgment, and Cancelling Hearing Set for June 9, 2023, of Willow Eden Fort, Administrative Law Judge, United States Department of Labor.

Michael A. Pusateri and Mark E. Solomons (Greenberg Traurig LLP), Washington, D.C., for Employer and its Carrier.

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

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Willow Eden Fort's Decision and Order Awarding Continuing Benefits under the Automatic Entitlement Provision of the Black Lung Benefits Act, Denying Employer's

Motion for Summary Judgment, and Cancelling Hearing Set for June 9, 2023 (22-BLA-05606) rendered on a survivor's claim filed on January 19, 2022.

The ALJ found Claimant is the widow and eligible dependent of the Miner who died on December 14, 2021.¹ Decision and Order at 2; Director's Exhibit 4. As the Miner was awarded benefits on his lifetime claim (2017-BLA-05578), the ALJ found Claimant automatically entitled to survivor's benefits under Section 422(l) of the Act, 30 U.S.C. §932(l) (2018).

Employer appealed the ALJ's award to the Benefits Review Board. Prior to filing a brief however, Employer requested the Board to hold the matter in abeyance pending its consideration of Employer's appeal of the Miner's lifetime claim.

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 Assocs., Inc.*, 380 U.S. 359 (1965).

Under Section 422(l) of the Act, a survivor of a miner who was eligible to receive benefits at the time of his 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) (2018). The Board recently upheld the award in the miner's claim. *Ison v. Arch of Ky./Apogee Coal Co.*, BRB No. 20-0350 BLA (Nov. 30, 2022) (unpub.), *aff'd on recon.* (May 3, 2023) (Order) (unpub.). Consequently, we reject, as moot, Employer's request to hold the case in abeyance. As Employer's challenge to the survivor's claim award was premised on its assertion that the Miner was not entitled to benefits during his lifetime and it conceded that Claimant is an eligible survivor of the Miner before the ALJ, we find it unnecessary to further delay this case and affirm the ALJ's determination that Claimant is

¹ The ALJ accurately observed that, at the July 18, 2019 Hearing in the Miner's claim, Employer stipulated Claimant is the Miner's spouse and an eligible dependent. Decision and Order at 2; 20-0350 BLA Miner's Claim (MC) Hearing Transcript at 54-55; *see Consolidation Coal Co. v. Director, OWCP [Burris]*, 732 F.3d 723, 730 (7th Cir. 2013) (voluntary stipulations are binding); *Richardson v. Director, OWCP*, 94 F.3d 164 (4th Cir. 1996) (same).

² This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 4; MC Hearing Transcript at 22.

derivatively entitled to survivor's benefits pursuant to Section 422(l).³ 30 U.S.C. §932(l) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, we affirm the ALJ's Decision and Order Awarding Continuing Benefits under the Automatic Entitlement Provision of the Black Lung Benefits Act, Denying Employer's Motion for Summary Judgment, and Cancelling Hearing Set for June 9, 2023.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

³ As Employer conceded Claimant is an eligible survivor of the Miner, briefing from the parties is unnecessary under the limited facts of this case.