



BRB No. 19-0219 BLA

DORIS M. WILLIAMS)	
(Widow of WILLIE WILLIAMS))	
)	
Claimant-Respondent)	
)	
v.)	
)	
GOLDEN OAK MINING, COMPANY)	DATE ISSUED: 03/23/2020
)	
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 of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

James M. Poerio (Poerio & Walter, Inc.), Pittsburgh, Pennsylvania, for employer.

Jeffrey S. Goldberg (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BUZZARD, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2017-BLA-05921) of Administrative Law Judge John P. Sellers, III awarding benefits on a survivor's claim¹ filed on November 28, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). On December 21, 2016, the district director issued a Proposed Decision and Order finding claimant derivatively entitled to benefits under Section 422(l) of the Act. 30 U.S.C. §932(l) (2012);² Director's Exhibit 10. After determining employer did not receive the Proposed Decision and Order, the district director issued a second Proposed Decision and Order on April 24, 2017. Director's Exhibit 19. At employer's request, the case was forwarded to the Office of Administrative Law Judges and assigned to the administrative law judge. Director's Exhibit 25. He found claimant satisfied the eligibility criteria for automatic entitlement to survivor's benefits. 30 U.S.C. §932(l) (2012).

On appeal, employer challenges its designation as the responsible operator, arguing the district director erred by not issuing a formal Notice of Claim or Schedule for the Submission of Additional Evidence in the survivor's claim before issuing the Proposed Decision and Order Awarding Benefits. It further argues the administrative law judge erred in applying Section 422(l). Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director) has filed a letter brief arguing there is no merit to employer's responsible operator argument.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359, 362 (1965).

We reject employer's argument that the district director erred in processing this claim. Employer's Brief at 4-7. As the Director asserts, the regulations contain an exception that allows the district director to issue a proposed decision and order "at any

¹ Claimant is the widow of the miner, who died on October 30, 2016. Director's Exhibit 9.

² Section 422(l) of the Act provides that the 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 the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l) (2012).

³ Because claimant's last coal mine employment was in Kentucky, we will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3; Hearing Transcript at 10; Director's Exhibit 14 at 15.

time during the adjudication” if its issuance would “expedite the adjudication of the claim.” 20 C.F.R. §725.418(a)(2); see *Sextet Mining Corp. v. Whitfield*, 604 Fed. Appx. 442 (6th Cir. 2015); Director’s Brief at 2. If the claimant is a survivor entitled to benefits under Section 422(l), the district director may designate the responsible operator in that proposed decision and order without first notifying the responsible operator of its potential liability. 20 C.F.R. §725.418(a)(3). Employer thereafter may challenge that designation and is afforded 30 days to submit liability evidence; the district director must then issue a new proposed decision and order. *Id.*

In response to the Proposed Decision and Order issued on April 24, 2017, employer generally disputed the district director’s findings, but submitted no liability evidence and made no specific argument to support revising its designation as responsible operator. Director’s Exhibit 25, 29. Employer does not allege it was denied an opportunity to contest its liability before the district director. Thus, contrary to employer’s contention, the district director’s issuance of the Proposed Decision and Order without first having issued a formal Notice of Claim or Schedule for the Submission of Additional Evidence was appropriate. 20 C.F.R. §725.418(a).

Further, the administrative law judge found employer is the responsible operator in the miner’s December 17, 2013 subsequent claim.⁴ *Williams v. Golden Oak Mining Co.*, 2015-BLA-05159, slip op. at 4-5 (Jan. 12, 2017) (unpub.). In consideration of employer’s appeal, the Board affirmed the responsible operator finding. *Williams v. Golden Oak Mining Co.*, BRB No. 18-0147 BLA, slip op. at 3-6 (Apr. 29, 2019) (unpub.). As employer had the opportunity to challenge its designation as responsible operator before the district director, administrative law judge, and Board, it has not set forth how the district director’s actions in the survivor’s claim were prejudicial. *Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 883-84, (6th Cir. 2000), citing *Consolidation Coal Co. v. Borda*, 171 F.3d 175, 184 (4th Cir. 1999).

However, because the Board ultimately vacated the administrative law judge’s award of benefits in the subsequent miner’s claim, *Williams*, BRB No. 18-0147 BLA, slip op. at 6-10, we must also vacate his determination that claimant is derivatively entitled to survivor’s benefits pursuant to Section 422(l). 30 U.S.C. §932(l). The administrative law judge has not yet issued a decision on remand in the miner’s claim. If he again awards benefits in the miner’s claim, he may reinstate the award of benefits in this survivor’s claim

⁴ The administrative law judge was assigned both the miner’s claim and survivor’s claim.

as claimant is automatically entitled to benefits pursuant to Section 422(l).⁵ See 30 U.S.C. §932(l). If he denies benefits in the miner's claim, he should remand the survivor's claim to the district director for the development of an evidentiary record to consider whether claimant can establish entitlement to survivor's benefits pursuant to Section 411(c)(4)⁶ or by establishing the miner's death was due to pneumoconiosis under 20 C.F.R. Part 718. See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205; *Neeley v. Director, OWCP*, 11 BLR 1-85, 1-86 (1988).

⁵ We affirm, as unchallenged, the administrative law judge's findings that claimant filed her claim after January 1, 2005 and is an eligible survivor of the miner. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 2.

⁶ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's death was due to pneumoconiosis where a claimant establishes at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); see 20 C.F.R. §718.305.

Accordingly, the administrative law judge's Decision and Order is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge