



BRB No. 15-0323 BLA

IONE W. HENDRIX)	
(Widow of J.W. HENDRIX))	
)	
Claimant-Respondent)	
)	
v.)	
)	
WEBSTER COUNTY COAL)	DATE ISSUED: 04/25/2016
CORPORATION)	
)	
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 of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Brent Yonts, PSC), Greenville, Kentucky, for claimant.

Anthony K. Finaldi and Cameron Blair (Fogle Keller Purdy, PLLC), Louisville, Kentucky, for employer.

Sarah M. Hurley (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2014-BLA-5680) of Administrative Law Judge Colleen A. Geraghty (the administrative law judge),

rendered on a survivor's claim¹ filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

Claimant filed her survivor's claim on April 17, 2014. Director's Exhibit 5. On April 25, 2014, the district director issued a Proposed Decision and Order, wherein he found that claimant was derivatively entitled to benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C §932(*l*) (2012).² Director's Exhibit 10. At employer's request, the case was forwarded to the Office of Administrative Law Judges for a formal hearing. Director's Exhibit 11.

On April 6, 2015, claimant filed a Motion for Summary Judgment, asserting that, under Section 932(*l*), and given the filing date of her claim, she was entitled to benefits based on the award to her deceased husband. In response, employer maintained that claimant is not automatically entitled to survivor's benefits because the miner was not receiving benefits pursuant to a final and effective award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responded in support of an award of benefits, asserting that claimant is entitled to benefits pursuant to the Board's decision in *Rothwell v. Heritage Coal Co.*, 25 BLR 1-142 (2014), based on the award to her deceased husband. Claimant filed a reply to employer's response, reiterating the basis for her motion.

In her Decision and Order, the administrative law judge found that employer was the properly designated responsible operator, noting that employer did not contest its liability in its response to claimant's motion for summary judgment. The administrative law judge further found: that claimant is an eligible survivor of a miner who was entitled to benefits at the time of his death; that claimant filed her survivor's claim after January 1, 2005; and that her claim was pending on or after March 23, 2010. Noting the Board's

¹ Claimant is the widow of the miner, who died on April 1, 2014. Director's Exhibit 7. The miner's initial claim for benefits, filed on October 23, 2001, was finally denied by the district director on February 4, 2003. Director's Exhibit LM-1.

The miner filed a subsequent claim for benefits on July 23, 2012, and the district director issued a Proposed Decision and Order awarding benefits on March 28, 2013. Director's Exhibit LM-2. Employer requested a formal hearing in the miner's claim, which was held on July 8, 2015. A Decision and Order has not yet been issued.

² Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012) provides that the survivor of a miner who was eligible to receive benefits at the time of his or her 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*).

holding in *Rothwell*, the administrative law judge found that claimant was automatically entitled to survivor's benefits pursuant to Section 932(l), even though the award of benefits in the underlying miner's claim is not yet final. Accordingly, the administrative law judge awarded survivor's benefits.

On appeal, employer challenges the administrative law judge's application of Section 932(l) to this case, and asserts that it has been denied due process. Claimant responds in support of the award of benefits. The Director responds, urging the Board to affirm the award of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed 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 (1965).

Employer asserts that claimant is not derivatively entitled to survivor's benefits under Section 932(l) because the miner was not receiving benefits pursuant to a final award, and that granting survivor's benefits prior to a final determination in the miner's claim constitutes a violation of its due process rights. Employer's Brief at 3-5. We disagree. Section 932(l) requires only that a miner be "determined to be eligible to receive benefits . . . at the time of his . . . death." 30 U.S.C. §932(l). As the Director accurately notes, the Board's decision in *Rothwell* made it clear that, for purposes of determining eligibility for derivative benefits under Section 932(l), the award of benefits in the miner's claim need not be final. Rather,

. . . upon an award of benefits at any stage of a black lung proceeding, a miner is legally entitled to receive benefits from either the responsible operator or the [Black Lung Disability] Trust Fund, regardless of an appeal, or a request for modification, of the award. [] Therefore, we agree with the Director that miners who are entitled to receive benefits payments under the regulations, even before their awards are final, are necessarily "determined to be eligible to receive benefits" 30 U.S.C. §932(l).

Rothwell, 25 BLR at 1-146.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibit LM-2-4.

In *Rothwell*, the Board recognized that, even where a responsible operator timely requests a hearing following a district director's proposed order awarding benefits in a miner's claim, the miner is entitled to receive benefits paid by the employer or, in the event of the employer's default, by the Black Lung Disability Trust Fund. *Rothwell*, 25 BLR at 1-146 n. 6, *citing* 20 C.F.R. §§725.420(a), 725.522(a). We, therefore, reject employer's argument that automatic entitlement is not applicable in a survivor's claim absent a final award of benefits in the miner's claim.

Employer next argues that its right to due process has been violated because "there has been no decision in the living miner's claim and a hearing was never scheduled for the survivor's claim." Employer's Brief at 5. Contrary to employer's contention, we perceive no due process violation, as employer is not prevented from pursuing litigation of the underlying miner's claim, and in the instant claim it did not assert before the administrative law judge that there are any issues in controversy.⁴ *See Vision Processing, LLC v. Groves*, 705 F.3d 551, 554-55, 25 BLR 2-231, 2-238-39 (6th Cir. 2013); *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-200 (2010). Because the miner in this case was "determined to be eligible to receive benefits" for the purpose of determining eligibility for derivative benefits under Section 932(l), we affirm the administrative law judge's determination that claimant is derivatively entitled to survivor's benefits pursuant to Section 932(l). 30 U.S.C. §932(l).

⁴ While employer marked the issue of responsible operator on Form CM-1025 as a contested issue, the administrative law judge correctly noted that employer did not argue in its response to claimant's motion for summary judgment that it was improperly designated as the responsible operator. Decision and Order at 2.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge