



BRB No. 15-0373 BLA

HELEN FAYE FORD)
(Widow of JERRY W. FORD))
)
 Claimant-Respondent)

v.)

CHEVRON MINING, INCORPORATED/)
PITTSBURG & MIDWAY COAL MINING)
COMPANY)
)
 Employer-Petitioner)

DATE ISSUED: 04/27/2016

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 Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

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

John C. Morton and Austin P. Vowels (Morton Law LLC), Henderson, Kentucky, for employer.

Kathleen H. Kim (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: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2012-BLA-05937) of Administrative Law Judge Jonathan C. Calianos, rendered on a survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). Claimant, the widow of a miner, filed her claim for survivor's benefits on May 7, 2012. In a Proposed Decision and Order dated May 9, 2012, the district director determined that claimant is derivatively entitled to survivor's benefits pursuant to Section 422(l) of the Act,¹ 30 U.S.C. §932(l) (2012), based on the proposed award of benefits in a claim filed by the miner.² Employer requested a hearing, and the case was forwarded to the Office of Administrative Law Judges. In an order dated February 6, 2015, the administrative law judge scheduled a hearing in the miner's claim, and the survivor's claim, for August 11, 2015. On March 25, 2015, claimant filed a motion for summary decision in the survivor's claim.

The administrative law judge issued a Decision and Order on May 27, 2015, without holding a hearing, and noted that the hearing in the miner's claim was still scheduled for August 11, 2015.³ Relying on the Board's holding in *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141 (2014), the administrative law judge found that summary disposition of the survivor's claim under Section 932(l) was appropriate, as claimant satisfied the relevant criteria for derivative entitlement to benefits, even though the award of benefits in the underlying miner's claim was not yet final. Accordingly, the administrative law judge found that claimant is automatically entitled to survivor's benefits pursuant to Section 932(l).

¹ 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.

² The miner filed a subsequent claim on May 9, 2011. The district director issued a Proposed Decision and Order awarding benefits on November 21, 2011. Employer requested a hearing and the case was transferred to the Office of Administrative Law Judges. The miner died on March 15, 2012, before a hearing was scheduled in his claim.

³ Employer states that a hearing in the miner's claim was held before an administrative law judge on that date, but a decision has not yet been issued. Employer's Reply Brief at 2.

On appeal, employer contends, in both its Brief in Support of Petition for Review and its Reply Brief, that the administrative law judge erred in awarding benefits to claimant under Section 932(l), in the absence of a final and effective award in the miner's claim. Employer also maintains that the automatic entitlement provision of Section 932(l) violates its right to due process. Claimant and the Director, Office of Workers' Compensation Programs, respond, urging the Board to reject employer's arguments and affirm the award of survivor's 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.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer asserts that the administrative law judge's application of the automatic entitlement provision of Section 932(l), and elimination of the requirement that the survivor prove that the miner's death was due to pneumoconiosis, violate employer's right to due process of law. We disagree. In *Vision Processing, LLC v. Groves*, 705 F.3d 551, 25 BLR 2-231 (6th Cir. 2013), the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, specifically rejected constitutional challenges to the application of Section 932(l) that are virtually identical to those raised by employer in this appeal. Therefore, for the reasons articulated in *Groves*, we reject employer's due process arguments. *Groves*, 705 F.3d at 554-55, 25 BLR at 2-238-39; see *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-200 (2010); see also *W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 25 BLR 2-65 (4th Cir. 2011), cert. denied, 568 U.S. 127 (2012); *B & G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 25 BLR 2-13 (3d Cir. 2011).

Employer also alleges that claimant does not satisfy the criteria for automatic entitlement under Section 932(l) because the underlying miner's claim was awarded by the district director, and the miner's entitlement to benefits "has not been determined" in light of employer's request for a hearing. Employer's Brief in Support of Petition for Review at 4. This contention does not have merit. 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) (emphasis added). As claimant and the Director accurately note, the Board's decision in *Rothwell* made it clear that, for the purposes of determining eligibility

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner's coal mine employment was in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Director's Exhibits 1-4; Director, Office of Workers' Compensation Programs, Response Letter at 1 n.1.

for derivative benefits under Section 932(l), the award in the miner's claim need not be final or effective:

In short, 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 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. The Board also specifically held that, even when a responsible operator timely requests a hearing following a district director's proposed award of benefits, the miner is considered to have been found entitled to receive benefits. *Rothwell*, 25 BLR at 1-146 n.6, citing 20 C.F.R. §§725.420(a), 725.522(a). Thus, contrary to employer's contention, the miner in this case was "determined to be eligible to receive benefits" for the purpose of assessing claimant's entitlement to a derivative award of benefits under Section 932(l). *Rothwell*, 25 BLR at 1-146-47. We affirm, therefore, the administrative law judge's finding to this effect.

We further affirm the administrative law judge's findings that: claimant is an eligible survivor of the miner; she filed her survivor's claim after January 1, 2005; and her claim was pending on or after March 23, 2010. Decision and Order at 4. Based on these determinations, we affirm the administrative law judge's finding that claimant meets the relevant criteria and, therefore, is derivatively entitled to survivor's benefits pursuant to Section 932(l).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge