

U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601



BRB No. 16-0119 BLA

CLEO P. BARNES)	
(Widow of NORMAN C. BARNES))	
)	
Claimant-Respondent)	
)	
v.)	
)	
COWIN & COMPANY, INCORPORATED)	DATE ISSUED: 08/16/2016
)	
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 Survivor's Benefits of Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

Abigail P. van Alstyne (Quinn, Connor, Weaver, Davies & Rouco, LLP), Birmingham, Alabama, for claimant.

Mary Lou Smith (Howe, Anderson & Smith, P.C.), Washington, D.C., for employer.

Michelle S. Gerdano (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Acting 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 Survivor's Benefits (2015-BLA-05262) of Administrative Law Judge Lystra A. Harris rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a survivor's claim filed on September 15, 2014. Director's Exhibit 1.

The administrative law judge noted that Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of his or her death is automatically entitled to receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*); Decision and Order at 2. The administrative law judge determined that claimant¹ satisfied the eligibility criteria for automatic entitlement to benefits pursuant to Section 932(*l*). Accordingly, the administrative law judge awarded survivor's benefits.

On appeal, employer contends that the administrative law judge erred in determining that claimant is derivatively entitled to survivor's benefits pursuant to Section 932(*l*). Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds and urges affirmance of the award.

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.² 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).

¹ Claimant is the widow of the miner, Norman C. Barnes, who died on August 15, 2014. Director's Exhibit 5.

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

The administrative law judge found that 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 on or after March 23, 2010; and that the miner was determined to be eligible to receive benefits at the time of his death.³ 30 U.S.C. §932(l); Decision and Order at 3.

Employer contends that claimant does not satisfy the eligibility criteria for automatic entitlement under Section 932(l) because the miner's award is not yet final. Employer's Brief at 2. Employer's argument lacks merit. As the Director asserts, and as employer recognizes, the Board has rejected that argument, and held that an award of benefits in a miner's claim need not be final for a claimant to receive benefits under Section 932(l). *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141, 1-145-47 (2014). Because employer raises no other contentions of error, 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).

³ At the time of the administrative law judge's award of survivor's benefits, the underlying award in the miner's claim was not yet final. After Administrative Law Judge Adele H. Odegard awarded benefits in the miner's claim in a decision dated June 20, 2014, employer appealed the Decision and Order to the Board. Subsequently, however, the Board affirmed Judge Odegard's award of benefits. *Barnes v. Cowin & Co., Inc.*, BRB No. 14-0367 (Aug. 25, 2015) (unpub.). Employer requested reconsideration, which was denied by the Board on March 25, 2016.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge