

BRB No. 11-0800 BLA

SANDY M. BALL)
(Widow of FRANKLIN L. BALL))
)
 Claimant-Respondent)
)
 v.)
)
 MACKIE COAL COMPANY,)
 INCORPORATED) DATE ISSUED: 02/03/2012
)
 and)
)
 EMPLOYERS INSURANCE OF WAUSAU)
 c/o LIBERTY MUTUAL MIDDLE)
 MARKET)
)
 Employer/Carrier-)
 Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and the Order of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer/carrier.

Maia S. Fisher (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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2011-BLA-5784) of Administrative Law Judge Larry S. Merck awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act). This case involves a survivor's claim filed on February 9, 2011.¹

On July 7, 2011, the administrative law judge ordered the parties to show cause why benefits should not be awarded in the survivor's claim pursuant to amended Section 932(l).² 30 U.S.C. §932(l). In response, employer notified the administrative law judge that claimant and employer had reached agreement on a settlement in the survivor's claim. Claimant filed a letter, in which she indicated that she wished to withdraw her claim, in light of the settlement.

In a Decision and Order dated August 10, 2011, the administrative law judge rejected the proposed settlement agreement, noting that the settlement of black lung claims is expressly prohibited under the Act. Decision and Order at 3. The administrative law judge next noted that the miner was receiving benefits at the time of his death, that claimant filed her survivor's claim on February 9, 2011, and that she is an eligible survivor of the miner. Decision and Order at 5. The administrative law judge, therefore, found that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l). 30 U.S.C. §932(l). Accordingly, the administrative law judge awarded benefits.³

On appeal, employer requests that the Board remand the case to the district director for evaluation of whether employer's liability for survivor's benefits may be

¹ Claimant is the surviving spouse of the miner, who died on January 11, 2011. Director's Exhibit 8. At the time of his death, the miner was receiving federal black lung benefits pursuant to an award on his lifetime claim. Director's Exhibits 5, 6.

² On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, were enacted. The amendments, in pertinent part, revive Section 932(l) of the Act, which provides that a 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).

³ In light of his award of benefits, the administrative law judge denied claimant's request to withdraw her claim, finding that it would not be in claimant's best interests. 20 C.F.R. §725.306(a)(2); Decision and Order at 4.

commuted to a lump sum payment to claimant pursuant to 20 C.F.R. §725.521. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion for Summary Affirmance, requesting that the Board affirm the administrative law judge's 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. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In this case, the administrative law judge found that claimant satisfied her burden to establish each fact necessary to demonstrate her entitlement under amended 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 March 23, 2010; and that the miner was determined to be eligible to receive benefits at the time of his death. Decision and Order at 5. As the Director accurately notes, employer has not challenged any of these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We, therefore, grant the Director's motion, and affirm the administrative law judge's determination that claimant is derivatively entitled to benefits pursuant to amended Section 932(l) of the Act. 30 U.S.C. §932(l).

Employer's request to remand the case to the district director for consideration of its application for a commutation of future payments of benefits is rejected. Applications for commutation of payments and lump sum awards must be submitted directly to the district director for consideration. *See* 20 C.F.R. §725.521(b).

Accordingly, the Director's Motion for Summary Affirmance is granted, and the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge