

U.S. Department of Labor

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



BRB No. 15-0208 BLA

DARLENE G. MOYE)	
(Widow of JAMES W. MOYE))	
)	
Claimant-Respondent)	
)	
v.)	
)	
MEADOW RIVER COAL COMPANY)	DATE ISSUED: 02/24/2016
)	
and)	
)	
WEST VIRGINIA COAL WORKERS')	
PNEUMOCONIOSIS FUND)	
)	
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 Order Awarding Benefits of Scott R. Morris,
Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds),
Norton, Virginia, for claimant.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

Rebecca J. Fiebig (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, BOGGS and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2013-BLA-05856) of Administrative Law Judge Scott R. Morris, rendered on a survivor's claim filed on April 8, 2013,¹ pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). In a Proposed Decision and Order dated April 18, 2013, the district director determined that claimant is derivatively entitled to survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l) (2012).² Employer requested a hearing and the case was forwarded to the Office of Administrative Law Judges. On January 23, 2014, employer filed a motion requesting that the survivor's claim be held in abeyance pending resolution of the miner's claim. On February 5, 2014, the Director, Office of Workers' Compensation Programs (the Director), filed a motion for summary decision. In an Order dated March 5, 2014, the administrative law judge denied the Director's motion and granted employer's request to hold the case in abeyance. However, following the Board's decision in *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141 (2014), the administrative law judge determined that the survivor's claim was ripe for adjudication, and he issued his Decision and Order Awarding Benefits on March 10, 2015, which is the subject of this appeal.

¹ Claimant is the widow of the miner, James W. Moye, who died on October 28, 2012. Director's Exhibit 3.

² On March 23, 2010, amendments to the Act, applicable to claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. The amendments, in pertinent part, revive Section 422(l) of the Act, 30 U.S.C. §932(l) (2012), which 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).

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 March 23, 2010; and that the miner had been determined to be eligible to receive benefits at the time of his death. *See* 30 U.S.C. §932(l); Decision and Order at 3. Accordingly, the administrative law judge found that claimant is derivatively entitled to survivor's benefits pursuant to Section 932(l), relying on the Board's decision in *Rothwell*.

On appeal, employer contends, both in its Brief in Support of Petition for Review and 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.³ Employer acknowledges, however, that the status of the miner's claim changed during the course of this appeal and that the procedural posture of the case is now identical to *Rothwell*. Employer's Reply Brief at 10. Claimant and the Director 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

³ The miner filed a claim for benefits on April 30, 2012, which was pending with the district director at the time of his death. Director's Exhibit 4. The district director issued a Proposed Decision and Order awarding benefits in the miner's claim on December 12, 2012. *Id.* Employer requested a hearing with regard to the miner's claim, and the case was forwarded to the Office of Administrative Law Judges. Employer's Motion to Hold Survivor's Claim in Abeyance at 2 (unpaginated). While the current appeal, BRB No. 15-0208 BLA, was pending, and after employer filed its Brief in Support of Petition for Review challenging the award of benefits to claimant on her survivor's claim, Administrative Law Judge Scott R. Morris issued a Decision and Order Awarding Benefits in the miner's claim. *Moye v. Meadow River Coal Co.*, OALJ Case No. 13-BLA-05460 (June 29, 2015). Employer appealed the award of benefits in the miner's claim, and that appeal is currently pending before the Board, having been assigned docket number, BRB No. 15-0418 BLA. We decide the current claim separate from the appeal in the miner's claim.

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

U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Based on employer’s concession that the facts of this case are now identical to *Rothwell*, the result in *Rothwell* is dispositive here. As employer raises no other contentions of error with regard to the survivor’s claim, 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).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge