

U.S. Department of Labor

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



BRB No. 15-0169 BLA

MARY JANE MURDOCK)
(Widow of ALBERT SIDNEY MURDOCK))

Claimant-Respondent)

v.)

MOUNTAIN LAUREL RESOURCES)
COMPANY)

and)

WEST VIRGINIA COAL WORKERS')
PNEUMOCONIOSIS FUND)

Employer/Carrier-)
Petitioners)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED: 01/20/2016

DECISION and ORDER

Appeal of the Decision and Order of Lystra A. Harris, Administrative Law
Judge, United States Department of Labor.

Karin L. Weingart (Spilman Thomas & Battle, PLLC), Charleston, West
Virginia, for employer.

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, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2013-BLA-5170) of Administrative Law Judge Lystra A. Harris awarding benefits 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 July 16, 2012.

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*). 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*). The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's award of benefits. Claimant has not filed a response brief.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹ Claimant is the surviving spouse of the miner, who died on June 3, 2012. Director's Exhibit 7.

² The record reflects that the miner's coal mine employment was in West Virginia. Director's Exhibits 1, 2. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

The administrative law judge found that claimant satisfied her burden to establish each fact necessary to demonstrate her entitlement under Section 932(l) of the Act: 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.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 underlying miner's claim was only awarded by the district director, and is therefore not "effective" in light of employer's request for a hearing. 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) (emphasis added). As the Director accurately notes, the Board's decision in *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141 (2014), made it clear that, for the purposes of determining eligibility 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.

³ The miner filed a subsequent claim for benefits on May 2, 2011. Director's Exhibit 2. In a Proposed Decision and Order dated February 16, 2012, the district director awarded benefits. *Id.* At employer's request, the case was forwarded to the Office of Administrative Law Judges for a formal hearing. *Id.* Administrative Law Judge Adele Higgins Odegard held a hearing in the miner's claim on December 4, 2013.

At the time that the administrative law judge issued her decision, she accurately noted that Judge Odegard had not yet issued a decision in the miner's claim. Decision and Order at 2 n.2. We note that Judge Odegard subsequently issued a Decision and Order dated August 28, 2015, wherein she awarded benefits in the miner's claim. Employer's appeal of that decision is currently pending before the Board, having been assigned Board docket number, BRB No. 15-0533 BLA.

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 still 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). Thus, contrary to employer's contention, 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). 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).

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