

BRB No. 14-0205 BLA
Case No. 14-BLA-5357

LENA R. FOX)	
(Widow of PAUL W. FOX))	
)	
Claimant-Respondent)	
)	
v.)	
)	DATE ISSUED: 10/07/2014
BEAR RIDGE SHOPS, INCORPORATED)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Petitioner)	ORDER

The Director, Office of Workers' Compensation Programs (the Director), filed an interlocutory appeal of the Order of Remand (2014-BLA-5357) of Administrative Law Judge William S. Colwell, 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). On June 25, 2014, the Board granted the Director's motion to hold this appeal in abeyance pending the Board's decision in *Rothwell v. Heritage Coal Co.*, BRB No. 14-0044 BLA, which also was an interlocutory appeal from an Order of Remand by Judge Colwell, and presented the same issue as this case: whether a survivor is automatically entitled to receive benefits under Section 932(l) of the Act, 30 U.S.C. §932(l), when the miner's lifetime claim is in award status but the award is not yet final.¹

¹ The Director, Office of Workers' Compensation Programs (the Director), has appealed at least seventeen other cases presenting the identical issue under Section 932(l), 30 U.S.C. §932(l) (2012). In the interest of judicial economy, and to properly direct the adjudicatory process, the Board designated *Rothwell v. Heritage Coal Co.*, BRB No. 14-0044 BLA, as the lead case on the issue.

The Board recently issued its decision in *Rothwell*, holding that Judge Colwell erred in concluding that an award of benefits in an underlying miner’s claim must be final for a survivor to be entitled to receive benefits under Section 932(l). *Rothwell v. Heritage Coal Co.*, BLR , BRB No. 14-0044 BLA (Sept. 3, 2014) (published). The Board therefore held that Judge Colwell erred in declining to adjudicate the survivor’s claim and remanding it to the district director. *Id.* Accordingly, the Board vacated Judge Colwell’s Order of Remand, and remanded the case to Judge Colwell for further proceedings. *Id.*

In light of the Board’s disposition of *Rothwell*, we lift the abeyance in this case. Because the issue presented here is identical to the issue resolved in *Rothwell*, the Board considers further briefing unnecessary.² As in *Rothwell*, Administrative Law Judge Stephen R. Henley (the administrative law judge) determined that claimant was not automatically entitled to receive benefits on her survivor’s claim under Section 932(l) because the award of benefits in the underlying miner’s claim was not yet final, and remanded the survivor’s claim to the district director. For the reasons stated in *Rothwell*, that determination by the administrative law judge was error. Contrary to the administrative law judge’s conclusion, the award of benefits in the miner’s claim need not be final for claimant to be entitled to receive survivor’s benefits under Section 932(l).³ *Rothwell*, BLR , BRB No. 14-0044 BLA, slip op. at 4-6.

² In his Motion to Hold in Abeyance, the Director stated that his brief in this case “would be substantively identical to that filed in *Rothwell*.” Motion at 3.

³ By Decision and Order dated June 3, 2014, Administrative Law Judge Stephen R. Henley awarded benefits in the miner’s claim. Employer filed an appeal with the Board. However, by Order dated August 7, 2014, the Board granted employer’s motion to dismiss its appeal, and remanded the case for the payment of benefits. *Fox v. Freeman United Coal Co.*, BRB No. 14-0346 BLA (Aug. 7, 2014) (Order) (unpub.).

Accordingly, the administrative law judge's Order of Remand is vacated, and the case is remanded to the administrative law judge for further proceedings consistent with the Board's opinion in *Rothwell*.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge