



BRB No. 22-0141 BLA

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| TANA S. OWENS                 | ) |                         |
| (Widow of DONALD P. OWENS)    | ) |                         |
|                               | ) |                         |
| Claimant-Respondent           | ) |                         |
|                               | ) |                         |
| v.                            | ) |                         |
|                               | ) |                         |
| CLINCHFIELD COAL COMPANY      | ) | DATE ISSUED: 03/22/2023 |
|                               | ) |                         |
| 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 Benefits of William P. Farley, Administrative Law Judge, United States Department of Labor.

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) William P. Farley's Decision and Order Awarding Benefits (2020-BLA-05926) rendered on a claim filed pursuant to the

Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a survivor's claim filed on May 28, 2019.<sup>1</sup>

The ALJ determined that because the Miner was found eligible to receive benefits at the time of his death,<sup>2</sup> Claimant is automatically entitled to survivor's benefits under Section 422(l) of the Act, 30 U.S.C. §932(l) (2018).<sup>3</sup> Thus, the ALJ awarded benefits.<sup>4</sup>

On appeal, Employer argues the ALJ erred in denying its motion to hold the survivor's claim in abeyance pending a final decision in the miner's claim and erred in awarding Claimant survivor's benefits under Section 422(l) because the miner's claim was pending on appeal before the Board and not final.<sup>5</sup> It also asserts the Miner is not entitled to benefits. Neither Claimant nor the Director, Office of Workers' Compensation Programs, filed a response.

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<sup>1</sup> Claimant is the widow of the Miner, who died on May 13, 2019. She pursued the miner's claim on behalf of her husband's estate and her survivor's claim separately. Director's Exhibits 2, 6.

<sup>2</sup> The Miner died while his most recent claim was pending before ALJ Paul R. Almanza. Director's Exhibits 2, 6. ALJ Almanza awarded benefits in the miner's claim on December 17, 2020. *Owens v. Clinchfield Coal Co.*, Case No. 2018-BLA-05866 (Dec. 17, 2020). Employer appealed the award of benefits in the miner's claim to the Benefits Review Board. The Board upheld the award. *Owens v. Clinchfield Coal Co.*, BRB No. 21-0206 BLA (May 24, 2022) (unpub.).

<sup>3</sup> Under Section 422(l) of the Act, a survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l) (2018).

<sup>4</sup> On May 14, 2021, Employer filed a motion requesting that the ALJ hold the survivor's claim in abeyance pending a final outcome in the miner's claim. Employer's May 14, 2021 Motion to Hold Claim in Abeyance. The ALJ denied Employer's motion on June 7, 2021. ALJ's June 7, 2021 Order Denying Employer's Request to Hold Claim in Abeyance and Canceling Hearing.

<sup>5</sup> On February 16, 2022, Employer requested the Board hold the survivor's claim in abeyance pending a final outcome in the miner's claim. Employer's February 16, 2022 Motion to Hold Claim in Abeyance. The Board denied the motion on April 4, 2022. *Owens v. Clinchfield Coal Co.*, BRB No. 22-0141 (Apr. 4, 2022) (Order) (unpub.).

The Board’s scope of review is defined by statute. We must affirm the ALJ’s Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.<sup>6</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

First, an award of benefits in a miner’s claim need not be final nor effective for a claimant to receive survivor’s benefits under Section 422(l). See *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141, 1-145-47 (2014);<sup>7</sup> Decision and Order at 3 n.12. Second, subsequent to Employer’s filing of its brief in the present appeal of the survivor’s award, the Board affirmed ALJ Almanza’s decision awarding benefits in the miner’s claim. *Owens v. Clinchfield Coal Co.*, BRB No. 21-0206 BLA (May 24, 2022) (unpub.). Therefore, Employer’s contentions that the survivor’s claim should be held in abeyance and/or consolidated with the miner’s claim, that an “effective order” is necessary in a pending miner’s claim for a survivor to be derivatively entitled to benefits, and that ALJ Almanza improperly reviewed the evidence in the miner’s claim are moot. See *Owens*, BRB No. 21-0206 BLA; Employer’s Brief at 3-9 (unpaginated).

The ALJ found Claimant established each element necessary to demonstrate entitlement under Section 422(l): she filed her claim after January 1, 2005; she is an eligible survivor of the Miner; her claim was pending on or after March 23, 2010; and the Miner was determined to be eligible to receive benefits at the time of his death. 30 U.S.C. §932(l); Decision and Order at 3. Because the Board previously affirmed the award of benefits in the miner’s claim and Employer raises no additional challenges to the award of

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<sup>6</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the Miner performed his coal mine employment in Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); see also *Owens*, BRB No. 21-0206 BLA, slip op. at 3 n.4.

<sup>7</sup> Employer contends *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141 (2014), is inapplicable because it involved modification proceedings that left intact an ALJ’s “effective order,” rather than involving an appeal. Employer’s Brief at 6-8 (unpaginated). *Rothwell* specifically states benefits under the Act are due “after the issuance of an effective order requiring the payment of benefits . . . notwithstanding the *pendency of a motion for reconsideration before an [ALJ] or an appeal to the Board or court . . .*” 25 BLR at 1-146, quoting 20 C.F.R. §725.502(a)(l) (emphasis added). Additionally, “[a]n effective order shall remain in effect *unless it is vacated* by an [ALJ] on reconsideration, or, upon review . . . by the [Board] or an appropriate court . . .” 20 C.F.R. §725.502(a)(l) (emphasis added).

benefits in the survivor's claim, we affirm it. 30 U.S.C. §932(l); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, the Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge