



BRB No. 16-0404 BLA

MARIAN L. MORGAN	)	
(Widow of DONALD E. MORGAN)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY	)	DATE ISSUED: 03/20/2017
	)	
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 Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Lynda Glagola (Lungs at Work), McMurray, Pennsylvania, lay representative for claimant.

Norman A. Coliane (Thompson, Calkins & Sutter, LLC), Pittsburgh, Pennsylvania, for employer.

Michelle S. Gerdano (Nicholas C. Geale, Acting Solicitor of Labor, Maia Fisher, 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 Awarding Benefits (2013-BLA-5943) of Administrative Law Judge Drew A. Swank, rendered on a survivor's claim filed on December 19, 2012, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). Applying the Board's holding in *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141 (2014), the administrative law judge found that claimant<sup>1</sup> was automatically entitled to survivor's benefits pursuant to 30 U.S.C. §932(l) (2012), as implemented by 20 C.F.R. §725.212(a)(3).<sup>2</sup> Accordingly, the administrative law judge awarded survivor's benefits.

On appeal, employer argues that *Rothwell* "is itself erroneous as a matter of law." Brief in Support of Petition for Review at 2. Employer requests that the Board reverse the award of benefits and remand the case to hold the survivor's claim in abeyance until the final adjudication of the miner's claim. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, responds and urges affirmance of the award.

Employer alleges that the Board's interpretation in *Rothwell* that Section 932(l) does not require finality of a miner's claim for a survivor to be awarded benefits automatically is inconsistent with the plain language of Section 932(l), its implementing regulation at 20 C.F.R. §725.212(a)(3), legislative history, and administrative practice. As employer recognizes, however, the Board has already rejected its arguments and held that an award of benefits in the miner's claim need not be final for a claimant to receive benefits under Section 932(l). *Rothwell*, 25 BLR at 1-145-47. We decline employer's request to reconsider the Board's holding in *Rothwell*, and therefore affirm the

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<sup>1</sup> Claimant is the widow of the miner, Donald E. Morgan, who died on November 23, 2012. Director's Exhibit 3. We adopt the procedural history of the survivor's claim set forth in the administrative law judge's April 28, 2016 Decision and Order Awarding Benefits, which is the subject of the current appeal. Decision and Order at 2-3. The procedural history of the miner's claim is set forth in *Morgan v. Consolidation Coal Co.*, BRB Nos. 14-0256 BLA and 14-0273 BLA (July 20, 2015) (unpub.) and the administrative law judge's March 23, 2016 Decision and Order on Remand. *Morgan*, BRB Nos. 14-0256 BLA and 14-0273 BLA, slip op. at 2-5; March 23, 2016 Decision and Order on Remand at 2-5.

<sup>2</sup> The administrative law judge noted employer's objection to the holding in *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141 (2014), but applied the controlling precedent and awarded survivor's benefits.

administrative law judge's determination that claimant is derivatively entitled to survivor's benefits pursuant to Section 932(I).<sup>3</sup> 30 U.S.C. §932(I).

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

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<sup>3</sup> Employer does not otherwise challenge claimant's eligibility under Section 932(I); specifically, that she filed her claim after January 1, 2005; that she is an eligible survivor of the miner; that her claim was pending on or after March 23, 2010; and that the miner was determined to be eligible to receive benefits at the time of his death. 30 U.S.C. §932(I). We therefore affirm the administrative law judge's determination that claimant met the criteria for entitlement pursuant to 30 U.S.C. §932(I). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 1-2.