



BRB No. 16-0511 BLA

DARLENE HATFIELD)	
(Widow of EDDIE L. HATFIELD))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
)	DATE ISSUED: 11/30/2016
)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	ORDER

Claimant¹ appeals, without the assistance of counsel, the Decision and Order (2015-BLA-5143) of Administrative Law Judge Richard A. Morgan denying 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 January 17, 2014. In response, the Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand, requesting that the Board vacate the administrative law judge's decision and remand this case for a hearing. The Director asserts that the administrative law judge's March 9, 2016 order, allowing the parties only

¹ Claimant is the widow of the miner, who died on July 22, 2011. Director's Exhibit 14. The miner's claims, filed on April 2, 1996 and August 20, 2007, were denied. Decision and Order at 2; Director's Exhibit 1. Accordingly, claimant is not entitled to benefits under Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. See 30 U.S.C. §932(l).

twelve days to state why a decision on the record should not be made, was contrary to the regulations and may have contributed to claimant's determination to waive her right to a hearing. Further, the Director contends, the administrative law judge's factual findings in this case make clear that claimant was adversely impacted by her agreement to waive her right to a hearing.² Director's Brief at 2, 3.

We agree with the Director that the administrative law judge erred in allowing the parties only twelve days to state why this case should not be decided on the record. Upon a party's request, an administrative law judge must hold a hearing to address any contested issue of fact or law. *See* 33 U.S.C. §919(c), (d), as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §§725.450, 725.451; *see Robbins v. Cyprus Cumberland Coal Co.*, 146 F.3d 425, 429, 21 BLR 2-495, 2-504 (6th Cir. 1998); *Cunningham v. Island Creek Coal Co.*, 144 F.3d 388, 390, 21 BLR 2-384, 2-388-89 (6th Cir. 1998). However, "[i]f the administrative law judge believes that an oral hearing is not necessary (for any reason other than on motion for summary judgment), the judge shall notify the parties by written order and allow at least thirty days for the parties to respond." 20 C.F.R. §725.452(d). Further, the Director concedes that the brevity of the time period allowed for claimant to respond, and the wording of the administrative law judge's March 9, 2016 Order, may have contributed to claimant's determination to waive her right to a hearing.³ Director's Brief at 2. The Director also concedes that a "hearing may have allowed [claimant] to better present her case, and potentially prevail."⁴ *Id.* at 3. In light of the foregoing, we agree with the Director that claimant's right to a full and fair adjudication of her claim

² The Director acknowledges that, at the time, he did not object to claimant's determination to waive her right to a hearing, but asserts that in retrospect it is not clear that claimant's agreement to a decision on the record was entirely knowing and voluntary. Director's Brief at 2.

³ The Director asserts that the administrative law judge's statement that a "decision on the record allows the parties to avoid the inconvenience of travelling to a hearing," Administrative Law Judge's March 9, 2016 Order, calls into question whether claimant's agreement to waive her right to a hearing was "wholly voluntary and thoughtfully considered." Director's Brief at 2-3.

⁴ The Director asserts that claimant's testimony might have established that the miner was regularly exposed to dust and, thus, could have established that his coal mine employment took place in conditions substantially similar to those in an underground mine. Director's Brief at 3. Further, the Director contends that a hearing might have aided claimant in clarifying what medical evidence she wished to submit into the record, and in selecting the appropriate medical evidence to support her claim. *Id.* at 3-4.

may not have been fully protected. *See Shapell v. Director, OWCP*, 7 BLR 1-304, 1-307 (1984); Director's Brief at 4-5.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated, and the case is remanded to the administrative law judge for a formal hearing.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge