

BRB No. 14-0206 BLA  
Case No. 14-BLA-5205

TRULA M. FLEMING	)	
(Widow of CLAYTON FLEMING)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	DATE ISSUED: 09/25/2014
	)	
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-5205) 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 July 2, 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.<sup>1</sup>

The Board recently issued its decision in *Rothwell*, holding that the administrative law judge 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).

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<sup>1</sup> 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.

*Rothwell v. Heritage Coal Co.*, BLR , BRB No. 14-0044 BLA (Sept. 3, 2014). The Board held, therefore, that the administrative law judge erred in declining to adjudicate the survivor’s claim and remanding it to the district director. *Id.* at 6. Accordingly, the Board vacated the administrative law judge’s Order of Remand, and remanded the case to the administrative law judge for further proceedings. *Id.* at 7.

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.<sup>2</sup> As in *Rothwell*, 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). *Rothwell*, BLR , BRB No. 14-0044 BLA, slip op. at 4-6.

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

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*.

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BETTY JEAN HALL, Acting Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge