



BRB No. 17-0074 BLA

LYDIA A. HOPSON)
(Widow of DEWEY HOPSON and o/b/o of)
ANN HOPSON))

Claimant-Respondent)

v.)

R & N COAL COMPANY,)
INCORPORATED)

and)

LIBERTY MUTUAL INSURANCE)

Employer/Carrier-)
Petitioners)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED: 09/28/2017

DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Carl M. Brashear (Hoskins Law Offices PLLC), Lexington, Kentucky, 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: BOGGS, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2014-BLA-5052) of Administrative Law Judge Patrick M. Rosenow 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). The sole issue presented in this case is whether claimant is entitled to augmented survivor's benefits for her adult daughter, Ann Hopson.¹ The administrative law judge found that claimant established that her daughter is a dependent pursuant to 20 C.F.R. §725.209. Accordingly, the administrative law judge awarded augmented survivor's benefits.

On appeal, employer contends that claimant is not entitled to augmented survivor's benefits because she did not submit relevant medical evidence establishing that her adult daughter is under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. §423(d). Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the administrative law judge's determination that claimant is entitled to augmented survivor's benefits.

¹ Claimant is the widow of Dewey Hopson, a miner, who died on May 1, 2012. Director's Exhibit 1. At the time of his death, the miner was receiving black lung benefits pursuant to an award issued on February 10, 1997. *Id.* The district director determined that the miner was entitled to augmented benefits for Ann Hopson, daughter of claimant and the miner, on the grounds that Ms. Hopson qualified as a dependent as an adult disabled child. *Id.* Following the miner's death, claimant filed her survivor's claim on June 12, 2012, and the district director awarded benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l), with benefits augmented for her daughter. Director's Exhibit 6. Employer challenged the award and requested a hearing. Director's Exhibit 7. On January 12, 2013, employer withdrew controversion of claimant's entitlement under Section 422(l). Director's Exhibit 10. On May 21, 2013, employer notified the district director that it continued to challenge claimant's entitlement to augmented benefits on behalf of her daughter. Director's Exhibit 17. The district director responded on August 14, 2013, stating that claimant's daughter satisfied the requirements for an eligible dependent. Director's Exhibit 18. At employer's request, a hearing was held on October 22, 2013. Director's Exhibit 20. Thereafter, the administrative law judge issued his Decision and Order on October 27, 2016, which is the subject of this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The regulations allow for the augmentation of benefits if the requisite standards of relationship and dependency are met. 20 C.F.R. §725.201(c). The regulation at 20 C.F.R. §725.209(a) provides that, for the purpose of augmenting the benefits of a surviving spouse, a child will be considered a dependent if: the child is unmarried, and is either under eighteen years of age or under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. §423(d);³ or the child is eighteen years or older and is a student. *See Hite v. Eastern Assoc. Coal Co.*, 21 BLR 1-46, 1-49 n.4 (1997).

Employer asserts that while claimant is entitled to derivative benefits pursuant to Section 422(l) of the Act, those benefits "do not automatically extend to augmentees." Employer's Brief at 2. Citing *Tackett v. Director, OWCP*, 10 BLR 1-117 (1987), employer contends that the administrative law judge erred in awarding augmented survivor's benefits, in the absence of specific medical evidence establishing that claimant's daughter is under a disability as defined under Section 223(d) of the Social Security Act. Employer contends that medical evidence in the record regarding claimant's daughter consists only of "an unsigned list of diagnoses, including low back pain, polyneuropathy and diabetes, anxiety, disc disorder lumbar, obesity, and hyperthyroidism." Employer's Brief at 3, *citing* Director's Exhibit 17.

Employer thus maintains that the medical evidence is insufficient to satisfy claimant's burden of proof because there is no indication of who made the diagnoses, their qualifications, the underlying bases for the diagnoses, or the degree of impairment. Employer also asserts that the administrative law judge erred in failing to specifically

² The record reflects that the miner's coal mine employment was in Virginia. Director's Exhibit 1. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

³ Under Section 223(d) of the Social Security Act, disability is defined as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. §423(d).

address whether claimant demonstrated that her daughter remains disabled on the basis set forth in the daughter's Social Security Administration (SSA) award. *Id.* at 3-4.

Employer's arguments are without merit. The administrative law judge properly noted that while claimant did not submit medical reports regarding her daughter's disability, the record contains evidence of the March 9, 1995 decision by the SSA establishing that her daughter met the medical requirements to receive supplemental security income due to disability from an intellectual disorder and obesity. Decision and Order at 5; Director's Exhibits 4, 18. The record also contains a January 10, 2013 letter, in which the SSA verified that claimant's daughter was receiving benefits, effective November 30, 1993. Director's Exhibit 14. Additionally, claimant's daughter and claimant each testified that claimant's daughter continues to receive SSA benefits. Employer's Exhibits 1, 2.

Disability determinations by the SSA, while not binding on the issue of an adult child's dependency for purposes of augmentation, are "highly probative," as they constitute a "determination by an agency with specialized expertise, applying the definition of disability which must be applied to this controversy[.]" *See Scalzo v. Director, OWCP*, 6 BLR 1-1016, 1-1019 (1984). Therefore, such determinations "if not controlling, can be afforded great weight." *Id.* at 1-1020. Here, the administrative law judge considered all the evidence of record, and reasonably found that the SSA award establishes that claimant's daughter is disabled within the meaning of Section 223(d) of the Social Security Act.⁴ *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756, 21 BLR 2-587, 2-591 (4th Cir. 1999); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Decision and Order at 4.

We also see no error in the administrative law judge's rational finding that the SSA award is sufficient to satisfy claimant's burden of proof, as there is no other

⁴ In *Tackett v. Director, OWCP*, 10 BLR 1-117 (1987), the Board held that medical evidence must be produced to establish a disability as defined in Section 223(d) of the Social Security Act. Contrary to employer's contention, *Tackett* does not require that we vacate the administrative law judge's finding of dependency. Unlike this case, in *Tackett*, there was no documentary evidence to support a finding that claimant's daughter was under a disability. *Tackett*, 10 BLR at 1-117. Claimant in this case has produced documentary evidence to satisfy her burden of proof under *Tackett*.

evidence in the record to undermine it. *See Betty B Coal Co. v. Director, OWCP [Stanley]*, 194 F.3d 491, 503, 22 BLR 2-1, 2-22 (4th Cir. 1999) (observing that employer “likely ha[d] no defense to augmentation on the merits” where claimant’s son’s receipt of Social Security disability benefits was in the record); Decision and Order at 6. Consequently, we affirm, as supported by substantial evidence, the administrative law judge’s finding that claimant is entitled to augmented benefits on behalf of her disabled adult daughter. 20 C.F.R. §725.201(c).

Accordingly, the administrative law judge’s Decision and Order awarding benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge