

BRB No. 89-1243 BLA

FRANK W. VERBECK)
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 Claimant)
)
 v.)
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T AND T CLAY & COAL COMPANY) DATE ISSUED:
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 and)
)
ROCKWOOD INSURANCE COMPANY)
)
 Employer/Carrier-)
 Petitioner)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Joan Huddy Rosenzweig, Administrative Law Judge, United States Department of Labor.

Daniel D. Harshman (Pietragallo, Bosick and Gordon), Pittsburgh, Pennsylvania, for employer and carrier.

Cathryn Celeste Helm (Thomas S. Williamson, Jr., Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: DOLDER, Acting Chief Administrative Appeals Judge, SMITH and

McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (84-BLA-5009) of Administrative Law Judge Joan Huddy Rosenzweig awarding benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge credited the miner

with seventeen years of qualifying coal mine employment, and reviewed this claim, filed on March 19, 1980, pursuant to the provisions at 20 C.F.R. Part 727. The administrative law judge found that the evidence established invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(1)-(3), and that employer failed to establish rebuttal of that presumption pursuant to 20 C.F.R. §727.203(b). Accordingly, benefits were awarded.

On appeal, employer challenges the administrative law judge's designation of Rockwood Insurance Company (Rockwood) as the responsible carrier herein. Employer further contends that the administrative law judge erred in substituting the Estate of Frank W. Verbeck as a party to this action in place of the miner, and in remanding this case for the district director to determine whether the miner's former spouse was entitled to benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand, which the Board accepts as the Director's response brief herein. Claimant has not participated in this appeal.¹

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer first challenges the administrative law judge's designation of Rockwood as the responsible carrier herein. Both employer and the Director correctly note that Rockwood disputed its liability in writing before the district director and the Office of Administrative Law Judges, and provided documentation in support of its position that it did not provide coverage during any period of the miner's employment with employer. See Director's Exhibits 33, 37; Employer's Exhibits 8, 11. Since the administrative law judge did not address this issue and render findings of fact in compliance with the provisions of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. 554(c)(2), 33 U.S.C. §919(d), 30 U.S.C. §932(a), we remand this case for the administrative law judge to weigh the conflicting evidence of record regarding the inclusive dates of the miner's

¹ The administrative law judge's finding that the evidence is sufficient to establish the miner's entitlement to benefits pursuant to 20 C.F.R. Part 727 is affirmed as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

employment with employer, and determine whether Rockwood was properly named as the carrier liable for coverage herein.

Employer also contends that the administrative law judge erred

in *sua sponte* naming the miner's Estate as a party to this action; in directing employer to pay benefits to the miner's Estate when the record contains no evidence that such an entity exists; and in remanding this case to the district director to determine the eligibility for benefits of the miner's divorced and remarried spouse, despite the evidence of record that she received no support from the miner, see Director's Exhibit 14. Employer's arguments have merit. The record reflects that the miner was initially determined eligible for benefits by the district director on July 28, 1981, see Director's Exhibit 38; the miner received interim benefits from the Black Lung Disability Trust Fund upon employer's refusal to commence payment, see Director's Exhibit 39; and the claim was referred to the Office of Administrative Law Judges on April 12, 1984 for a hearing, which was subsequently scheduled for November 6, 1984. See Director's Exhibit 40. Upon employer's motion for a continuance to further develop evidence in light of the miner's death during the summer of 1984, Administrative Law Judge Daniel A. Sarno, Jr., issued an Order Granting Continuance on October 19, 1984, wherein he substituted the Estate of Frank W. Verbeck in place of the miner in the caption of this case as the claimant herein. While the Director correctly notes that the regulations permit the substitution of parties upon the death of a party and an award of benefits even though the miner is deceased, the provisions at 20 C.F.R. §725.360 delineate the appropriate persons and entities who shall be parties to a claim, and subsection (b) provides that in order for a widow, child, parent, sibling, or the representative of a decedent's estate to be made a party, such person must make a showing in writing that his or her rights with respect to benefits may be prejudiced by a decision of an adjudication officer. See 20 C.F.R. §725.360. Since the record does not contain any written request for a substitution of parties herein, nor any Estate documentation, we vacate the administrative law judge's order directing employer to pay benefits to the miner's Estate, and reinstate the name of the miner into the caption of this case. On remand, the administrative law judge must determine the proper parties to this action pursuant to Section 725.360, and must further determine whether the evidence establishes the existence of any eligible survivors of the miner who are derivatively entitled to benefits. See 30 U.S.C. §§922, 932, 20 C.F.R. §§725.212 - 725.233; *Pothering v. Parkson Coal Co.*, 861 F.2d 1321, 12 BLR 2-60 (3d Cir. 1988); *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed in part, vacated in part, and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge