



BRB Nos. 14-0283 BLA  
and 14-0345 BLA

HELEN PHILLIPS	)	
(Widow of and on behalf of CHARLES	)	
PHILLIPS)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WOLF CREEK COLLIERIES d/b/a SHELL	)	DATE ISSUED: 04/28/2015
COAL & TERMINAL COMPANY	)	
	)	
and	)	
	)	
ST. PAUL TRAVELERS BOND CLAIM	)	
	)	
Employer/Carrier-	)	
Petitioners	)	
	)	
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 in the miner's claim and the Decision and Order Awarding Benefits in the survivor's claim of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer/carrier.

Jonathan P. Rolfe (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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, McGRANERY and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the March 28, 2014 Decision and Order Awarding Benefits (2011-BLA-05173) in a miner's claim and the May 29, 2014 Decision and Order Awarding Benefits (2012-BLA-05031) in a survivor's claim of Administrative Law Judge Joseph E. Kane, issued 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 miner's subsequent claim filed on March 17, 2008, and a survivor's claim filed on April 23, 2009.<sup>1</sup> The Board has consolidated the appeals for purposes of a decision only. In regard to the miner's subsequent claim, the administrative law judge credited the miner with twenty-one years of underground coal mine employment, and adjudicated the claim pursuant to the regulations at 20 C.F.R. Part 718. The administrative law judge determined that the newly submitted evidence was sufficient to establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2) and, thus, found that the evidence demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). The administrative law judge also determined that the miner suffered from complicated pneumoconiosis and that he was entitled to the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. Accordingly, benefits were awarded in the miner's claim. Subsequently, the administrative law judge found that the miner's surviving spouse (claimant) satisfied the eligibility criteria for automatic entitlement to benefits pursuant to 30 U.S.C. §932(l).<sup>2</sup>

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<sup>1</sup> The miner filed his first claim on April 21, 1989, and it was denied by the district director on October 6, 1989. Miner's Claim (MC) Director's Exhibits 1-138, 1-4. As the miner took no further action on the claim, the district director administratively closed the claim and deemed it abandoned. MC Director's Exhibit 1-2. The miner filed a subsequent claim on March 17, 2008, but died on March 3, 2009. MC Director's Exhibit 11. Claimant, the surviving spouse of the miner, is acting on behalf of the miner's estate. MC Director's Exhibits 11, 36. A hearing was held on May 1, 2012.

<sup>2</sup> On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, were enacted. The amendments, in pertinent part, revive Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that a survivor of a miner who was "determined" to be eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l).

On appeal, employer argues that the administrative law judge did not give proper consideration to evidence establishing that Dr. Dennis was suspended from the practice of medicine, and the effect of that suspension on the credibility of Dr. Dennis's opinion in this case. Employer also argues that the administrative law judge erred in crediting Dr. Dennis's opinion, and giving less weight to Dr. Oesterling's opinion, as to whether the miner had complicated pneumoconiosis. Additionally, employer contends that claimant is not entitled to survivor's benefits because the automatic entitlement provision of amended Section 932(l) violates due process. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to reject employer's arguments that the administrative law judge erred in his consideration of Dr. Dennis's suspension, and that employer's right to due process has been violated.<sup>3</sup> Claimant has not filed a response brief.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law.<sup>4</sup> 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).

## **I. The Miner's Claim**

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304 of the regulations, provides that there is an irrebuttable presumption of total disability due to pneumoconiosis if the miner suffers from a chronic dust disease of the lung which, (a) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (b) when diagnosed by biopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, is a condition which would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

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<sup>3</sup> The Director, Office of Workers' Compensation Programs, elected not to file a substantive response, addressing employer's arguments about the administrative law judge's finding of complicated pneumoconiosis, unless specifically requested to do so by the Board.

<sup>4</sup>The record reflects that the miner's last coal mine employment was in Kentucky. Miner's Claim Director's Exhibit 1-132. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director*, 12 BLR 1-200, 1-202 (1989) (en banc).

The introduction of legally sufficient evidence of complicated pneumoconiosis does not, however, automatically invoke the irrebuttable presumption found at 20 C.F.R. §718.304. The administrative law judge must examine all the evidence on this issue, i.e., evidence of simple and complicated pneumoconiosis, as well as evidence of no pneumoconiosis, resolve any conflicts, and make a finding of fact. *Gray v. SLC Coal Co.*, 176 F.3d 382, 21 BLR 2-615 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

In considering whether the miner had complicated pneumoconiosis, the administrative law judge noted that the record contains two interpretations of a March 31, 2008 x-ray, submitted in conjunction with the miner's current claim, and six interpretations of four x-rays, dated January 21, 1981, October 22, 1984, June 15, 1989, and June 20, 1989, submitted in the miner's prior claim. (Miner's Claim) MC Director's Exhibits 1-106, 1-84, 1-85, 1-80. 1-78, 1-29, 13-1; MC Employer's Exhibit 1. Because all of the x-rays of record were read as negative for simple and complicated pneumoconiosis, the administrative law judge found that claimant was unable to establish that the miner had complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a). March 28, 2014 Decision and Order at 22, 25.

Pursuant to 20 C.F.R. §718.304(b), the administrative law judge first considered the report of Dr. Dennis, who performed an autopsy of the miner's lungs on March 4, 2009, and the February 14, 2013 report of Dr. Oesterling, who reviewed the miner's death certificate, as well as Dr. Dennis's report and the autopsy slides. MC Claimant's Exhibit 1; MC Employer's Exhibit 9. Dr. Dennis, who at the time was Board-certified in anatomical and clinical pathology, reported under "Gross Description" that the right lung showed "macule formation measuring 0.5-1.5 cm" and another macule measuring "1 cm diameter." MC Claimant's Exhibit 1. In the gross description of the left lung, Dr. Dennis noted one macule measuring "greater than 1.5 cm diameter." *Id.* Under microscopic description, Dr. Dennis reviewed fifteen slides labeled Sections A through O and provided the following description of each slide:

Section A shows severe emphysema, focal bronchopneumonia, abscess formation and collapse of alveolus spaces.

Section B shows massive fibrosis, progressive massive fibrosis with anthracosilicosis and macules measuring greater than 1.5 cm diameter.

Section C shows emphysema, fibrosis, thickening of the pleura and progressive massive fibrosis.

Section D shows progressive massive fibrosis with septum fibrosis present, nodule measures greater than 1.5 cm diameter.

Section E shows progressive massive fibrosis, silica particle impregnation, anthracosilicotic change and silica particles noted by polarized microscopy.

Section F shows more of the fibrosis, bronchopneumonia, pulmonary congestion and emphysema.

Section G shows pulmonary congestion and edema, emphysema, fibrosis, progressive massive fibrosis variety and anthracosilicosis.

Section H shows macular formation, fibrosis and pneumonia.

Section I shows progressive massive fibrosis, emphysema, congestion and black pigment deposition.

Section J shows bronchopneumonia, fibrosis, and emphysema and features compatible with progressive massive fibrosis.

Section K shows bronchopneumonia, fibrosis, pulmonary congestion and edema and severe emphysema.

Section L shows severe emphysema, fibrosis and macule formation measuring 1.5 cm diameter.

Section M shows fibrosis, congestion, edema, atelectasis, and also emphysema.

Section N shows pulmonary congestion and edema, fibrosis, atelectasis and congestion.

Section O shows dense interstitial fibrosis, moderate to severe with progressive massive fibrosis present, emphysematous changes are also present. Bronchopneumonia is also present.

*Id.* Under “Final Diagnosis,” Dr. Dennis opined that the miner suffered from moderate to severe anthracosilicosis with progressive massive fibrosis; pulmonary congestion and edema; emphysema; and bilateral pulmonary congestion, bronchopneumonia, and emphysema with progressive massive fibrosis. *Id.*

In his report, Dr. Oesterling, who is Board-certified in anatomical and clinical pathology, and nuclear medicine, reviewed the fifteen autopsy slides prepared by Dr. Dennis. MC Employer’s Exhibit 9. Dr. Oesterling observed that “[o]nly sections I and G reached 2 cm in greatest dimension, the remainder are all slightly smaller.” *Id.* Dr. Oesterling disagreed with Dr. Dennis’s measurement of a 1.5 cm mass on slide B, instead measuring the area of thickening as “6 x 5 mm.” *Id.* With respect to slide J, Dr. Oesterling disagreed with Dr. Dennis’s finding of progressive massive fibrosis, stating that “it does not reach a 2 cm total dimension and there is no solid lesion that would fulfill the criteria for progressive massive fibrosis.” *Id.* Dr. Oesterling noted that slide L measured “slightly over 1.5 cm and shows only one slightly solid area which . . . clearly is not solid macular formation.” *Id.* On slide O, Dr. Oesterling noted “a surface that reaches 2 cm in length, but less than .5 cm in thickness and clearly is not a solid mass of micronodules that have [sic] fused.” *Id.* Dr. Oesterling opined that “none of these slides fulfill the criteria for a diagnosis of progressive massive fibrosis, an entity that consists of masses of micronodules that coalesce to reach a 2 cm diameter.” *Id.*

Upon examination of slide K at an increased magnification of 300 percent, Dr. Oesterling identified black pigment and silica crystals with “some fibrosis” measuring approximately “1 cm x .5 cm” but no micronodular change. MC Employer’s Exhibit 9. He stated that “the black pigment is of coal dust origin and we are looking at minimal anthracotic pigmentation of the pleural membrane with reactive fibrosis.” *Id.* On slide M, he noted “smokers’ macrophages,” and inflammation characteristic of “respiratory bronchiolitis with associated interstitial lung disease.” *Id.* In addition, Dr. Oesterling identified panlobular emphysema on slide A, which he stated “is typically seen in association with tobacco smoke and is not seen in low levels of coal workers’ pneumoconiosis.” *Id.* Severe bronchopneumonia was noted on slide J, and interstitial fibrosis secondary to a “marked pneumonic process” was observed on slide O. *Id.* In conclusion, Dr. Oesterling opined that chronic obstructive pulmonary disease was a significant factor in the miner’s death, as stated on the death certificate. He did not agree with Dr. Dennis’s diagnosis of progressive massive fibrosis, and he did not believe that coal workers’ pneumoconiosis hastened, contributed to, or caused the miner’s death. *Id.*

In weighing the conflicting autopsy reports, the administrative law judge observed:

The Department has specifically rejected the view that a doctor must see a two-centimeter lesion on autopsy or biopsy to diagnose complicated pneumoconiosis, particularly because there is no consensus among doctors that this is a valid criterion. Rather, the pathological evidence need only show that massive lesions were present in the [m]iner’s lung.

March 28, 2014 Decision and Order at 24. The administrative law judge determined that Dr. Oesterling’s opinion was entitled to less weight because Dr. Oesterling based his medical opinion “on a standard for diagnosing progressive massive fibrosis that is not set forth in the regulations.” *Id.* In addition, the administrative law judge noted that Dr. Oesterling failed to explain “how sections I and G, which reached two centimeters ‘in greatest dimension,’ did not meet the criteria for diagnosing progressive massive fibrosis.” *Id.* In contrast, the administrative law judge found that Dr. Dennis’s opinion was reasoned because it was “based on both a gross description and microscopic examination of the [m]iner’s lungs, and because his diagnosis meets the standard for diagnosing progressive massive fibrosis that is set forth in the regulations.” *Id.* at 23. The administrative law judge, therefore, found that claimant established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b).

Relevant to 20 C.F.R. §718.304(c), the administrative law judge considered the miner’s hospitalization and treatment records, and the medical opinions of Drs. Forehand and Castle. The administrative law judge noted that the miner’s treatment records “shed little light on whether the [m]iner suffered from complicated pneumoconiosis” because,

although the records document treatment for various respiratory and pulmonary conditions, “none of the physicians offered opinions as to the causes of those diseases, or related those diseases to [the miner’s] exposure to coal dust.” March 28, 2014 Decision and Order at 21. Dr. Forehand examined the miner on March 31, 2008, at the request of the Department of Labor, and diagnosed legal pneumoconiosis but did not comment on whether the miner also suffered from complicated pneumoconiosis. MC Director’s Exhibit 13. Dr. Castle reviewed the miner’s medical records and prepared an October 26, 2009 report in which he opined that the miner did not have clinical or legal pneumoconiosis. MC Employer’s Exhibit 2. The administrative law judge determined that, while the evidence relevant to 20 C.F.R. §718.304(c) did not establish the presence of complicated pneumoconiosis, it did not disprove it either. March 28, 2014 Decision and Order at 25.

Finally, the administrative law judge weighed all of the relevant evidence together and concluded:

I do not find that the x-ray evidence or medical opinions diminish the probative value of the autopsy evidence. An autopsy provides the most reliable evidence of clinical pneumoconiosis. I have found that the weight of the autopsy evidence supports a finding of complicated pneumoconiosis. Thus, I find the [c]laimant has established that the [m]iner had complicated pneumoconiosis.

March 28, 2014 Decision and Order at 25 (footnote omitted). The administrative law judge found, therefore, that claimant invoked the irrebuttable presumption that the miner was totally disabled due to pneumoconiosis. *Id.*

Initially, we reject employer’s assertion that the administrative law judge did not give proper consideration to Dr. Dennis’s suspension by the Kentucky Board of Medical Licensure in August 2012. In a post-hearing motion to exclude Dr. Dennis’s opinion, employer submitted copies of a Complaint filed against Dr. Dennis by the Kentucky Board of Medical Licensure’s Inquiry Panel and an Emergency Order of Suspension from the Kentucky Board of Medical Licensure (“Emergency Order”), both of which were dated August 17, 2012. The Complaint and Emergency Order alleged that between March 2011 and April 2012, Dr. Dennis improperly prescribed controlled substances to one or more patients, and engaged in inappropriate conduct with one of those patients. Employer argues that the administrative law judge “erred in failing to consider the effect on Dr. Dennis’s credibility of the behavior described in the complaint.” Combined Brief on Behalf of Employer at 4. In addressing whether the suspension of Dr. Dennis’s medical license affected his credibility, the administrative law judge noted that at the time Dr. Dennis performed the autopsy of the miner and prepared the pathology report, in March of 2009, Dr. Dennis was in good standing with the Kentucky Board of Medical

Licensure. Order Denying Employer's Motion to Strike Evidence at 2. The administrative law judge stated:

Given that the allegations against Dr. Dennis have not been proven and that the allegations are unrelated to this case in particular or to his expertise in pathology in general . . . it would be inappropriate at this point to exclude or discredit Dr. Dennis'[s] autopsy report.

*Id.* at 3.

An administrative law judge has broad discretion in resolving procedural matters and determining the credibility of the evidence. *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). We hold that the administrative law judge permissibly exercised his discretion in finding that the allegations against Dr. Dennis and the suspension of his medical license, for reasons unrelated to this case or his expertise in pathology, did not affect the credibility of his autopsy report in this case. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 23 BLR 2-261 (6th Cir. 2005); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Brown v. Director, OWCP*, 7 BLR 1-730 (1985); *see also Peabody Coal Co. v. Benefits Review Board [Wells]*, 560 F.2d 797, 1 BLR 2-133 (7th Cir. 1977).

Employer also contends that Dr. Dennis's findings are insufficient to support a diagnosis of complicated pneumoconiosis because no evidence has been submitted to establish that the macules or nodules he identified would be equivalent to opacities seen on x-ray with a diameter of greater than 1.0 cm and a classification of category A, B, or C, under the ILO classification system. In addition, employer argues there is no evidence to establish that the macules observed by Dr. Dennis would constitute massive lesions. Therefore, employer asserts that the administrative law judge erred in basing his finding of complicated pneumoconiosis on Dr. Dennis's report. Employer further asserts that the administrative law judge "failed to give sufficient reason for preferring Dr. Dennis'[s] opinion over that of Dr. Oesterling." Combined Brief on Behalf of Employer at 6. Employer's arguments are rejected as they are without merit.

The United States Court of Appeals for the Sixth Circuit has held that a claimant may establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b) if the autopsy evidence shows massive lesions or, in the alternative, if the nodules found on autopsy would appear as greater than one centimeter on x-ray. *See Gray*, 176 F.3d at 387, 21 BLR at 2-624. An autopsy report need not contain the specific words "massive" or "lesions" in order to satisfy the requirements at 20 C.F.R. §718.304(b). *See Pittsburg & Midway Coal Mining Co. v. Director, OWCP [Cornelius]*, 508 F.3d 975, 986, 24 BLR 2-72, 89 (11th Cir. 2007). As the administrative law judge



correctly noted, the term “progressive massive fibrosis” is generally considered to be equivalent to the term “complicated pneumoconiosis” and when there is a diagnosis of progressive massive fibrosis, it equates to a diagnosis of massive lesions resulting from pneumoconiosis. *See Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 365 n.4, 23 BLR 2-374, 2-385 n.4 (4th Cir. 2006) (autopsy report diagnosing “[c]oal worker type pneumoconiosis, complicated type, with progressive massive fibrosis” sufficient to invoke the presumption pursuant to 20 C.F.R. §718.304(b)); *see generally Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 1359, 20 BLR 2-227, 2-228 (4th Cir. 1996) (noting that complicated pneumoconiosis is known “by its more dauntingly descriptive name, ‘progressive massive fibrosis.’”); March 28, 2014 Decision and Order at 22-23.

Because progressive massive fibrosis equates to a diagnosis of massive lesions at 20 C.F.R. §718.304(b), and the Sixth Circuit does not require an equivalency determination when massive lesions are diagnosed, we reject employer’s contention that the administrative law judge erred in omitting a determination of whether the macular development observed by Dr. Dennis would appear as an opacity greater than one centimeter in diameter on x-ray. *See Gray*, 176 F.3d at 387, 21 BLR at 2-624. Further, because the administrative law judge found that Dr. Dennis provided a reasoned and documented opinion, we affirm the administrative law judge’s finding that Dr. Dennis’s opinion is sufficient to establish that the miner had complicated pneumoconiosis at 20 C.F.R. §718.304(b). *See Cornelius*, 508 F.3d at 986, 24 BLR at 2-89; *Perry*, 469 F.3d at 365 n.4, 23 BLR at 2-385 n.4; *Gruller v. Bethenergy Mines, Inc.*, 16 BLR 1-3, 1-5 (1991); March 28, 2014 Decision and Order at 23.

We also reject employer’s argument that the administrative law judge did not give proper weight to Dr. Oesterling’s opinion that the miner did not have complicated pneumoconiosis. The administrative law judge permissibly found that Dr. Oesterling’s opinion was not well reasoned, because Dr. Oesterling applied a standard for diagnosing progressive massive fibrosis/complicated pneumoconiosis that is not set forth in the regulations. *See Cornelius*, 508 F.3d at 986, 24 BLR at 2-92. Therefore, because the administrative law judge permissibly exercised his discretion in determining the weight to accord the opinions of Drs. Dennis and Oesterling, we affirm his finding that claimant established that the miner had complicated pneumoconiosis, based on the autopsy evidence under 20 C.F.R. §718.304(b). *See Gray*, 176 F.3d at 388-89, 21 BLR at 2-626-29; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). We further affirm, as supported by substantial evidence, the administrative law judge’s finding, based on his consideration of all the evidence of record, that claimant is entitled to the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. *See Gray*, 176 F.3d at 388-89, 21 BLR at 2-626-29; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *see also Cornelius*, 508

F.3d at 987, 24 BLR at 2-94; *Melnick*, 16 BLR at 1-33-34. Thus, we affirm the award of benefits in the miner's claim.

## II. The Survivor's Claim

Employer asserts that application of the automatic entitlement provisions of amended Section 932(l), and elimination of the requirement that the survivor prove that the miner's death was due to pneumoconiosis, violate employer's right to due process of law. Contrary to employer's assertion, in *Vision Processing, LLC v. Groves*, 705 F.3d 551, 25 BLR 2-231 (6th Cir. 2013), the Sixth Circuit specifically rejected constitutional challenges to the application of amended Section 932(l), that are virtually identical to those raised by employer in this appeal. For the reasons articulated in *Groves*, we reject employer's due process arguments in this appeal. *Groves*, 705 F.3d at 554-55, 25 BLR at 2-238-39; see *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-200 (2010); see also *W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 25 BLR 2-65 (4th Cir. 2011), cert. denied, 568 U.S. (2012); *B & G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 25 BLR 2-13 (3d Cir. 2011).

Employer also contends that because employer's appeal of the award of benefits to the miner is pending before the Board, automatic survivor's benefits should not be awarded, as there was no final decision finding the miner eligible for benefits during his lifetime. Contrary to employer's contention, the Board held in *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141 (2014), that amended Section 932(l) provides automatic entitlement to survivor's benefits to eligible survivors of miners who are determined to be eligible for benefits, including miners whose determinations of eligibility are not yet final, and are subject to potential appeal and reversal. *Rothwell*, 25 BLR at 1-146-47. Therefore, for the reasons set forth in *Rothwell*, we reject employer's argument that amended Section 932(l) is not applicable because the award of benefits in the miner's claim has not become final. *Id.*

Claimant filed her survivor's claim after January 1, 2005; she is an eligible survivor of the miner; her claim was pending after March 23, 2010; and the miner was determined to be eligible to receive benefits at the time of his death. Thus, we affirm the administrative law judge's finding that claimant is entitled to survivor's benefits pursuant to amended Section 932(l). 30 U.S.C. §932(l).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits in the miner's claim and the Decision and Order Awarding Benefits in the survivor's claim are affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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GREG J. BUZZARD  
Administrative Appeals Judge