



BRB No. 16-0348 BLA

CHARLENE L. JOHNSON)	
(Widow of SCOTT JOHNSON))	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED: 12/19/2017
)	
PARAMOUNT COAL CORPORATION)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

Employer appealed the Order Awarding Survivor's Benefits (2014-BLA-05511) of Associate Chief Administrative Law Judge William S. Colwell on a survivor's claim filed on February 22, 2012. Employer filed its brief challenging the administrative law judge's award of benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l) (2012), which provides for automatic entitlement for survivors of miners who were determined to be eligible to receive benefits at the time of death.¹

On January 27, 2017, the Board granted the motion of the Director, Office of Workers' Compensation Programs (the Director), to hold this case in abeyance pending

¹ Section 422(l) of the Act 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) (2012).

the decision in the underlying miner's claim, *Johnson v. Paramount Coal Corp.*, 2016-BLA-05383, which was before a different administrative law judge.

The administrative law judge to whom the miner's claim was assigned issued a Decision and Order denying benefits in the miner's claim on August 17, 2017. On November 3, 2017, the Board lifted the abeyance in this appeal, and granted the Director ten days to file a response brief.

In his response, the Director notes that the miner's claim was denied on August 17, 2017 and that no appeal of that decision has been filed with the Board.² The Director states that the Board should therefore vacate the award of survivor's benefits and remand this case for further proceedings:

The . . . decision denying benefits in the underlying miner's claim requires that the survivor's derivative award of benefits based on Section 422(l) be vacated. Therefore, this claim should be remanded to the District Director, where the widow may pursue her own claim on the merits, if she so chooses.

Director's Brief at 2. The Board has received no replies from claimant or employer.

We agree with the Director. In light of the decision denying benefits in the miner's claim, we must vacate the administrative law judge's award of derivative benefits in the survivor's claim. Further, a review of the record reveals no evidence addressing whether the miner had pneumoconiosis arising out of coal mine employment, or whether his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202, 718.203, 718.205; Director's Exhibits 1-14. Therefore, we also agree with the Director that this case must be remanded to the district director for claimant to be provided with the opportunity to pursue her claim for survivor's benefits under 20 C.F.R. Part 718.

² The Board has searched its docket system and found no appeal of the Decision and Order denying the miner's claim in 2016-BLA-05383.

Accordingly, the administrative law judge's Order Awarding Survivor's Benefits is vacated, and this case is remanded to the district director for further proceedings.

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge