

BRB No. 14-0195 BLA
Case No. 14-BLA-5292

MARY C. LESTER)
(Widow of DON LESTER))
)
Claimant-Respondent)
)
v.)
) DATE ISSUED: 10/07/2014
HARD TIMES MINING, INCORPORATED)
)
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 (14-BLA-5292) 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 22, 2014, the Board, on its own motion, elected 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.¹

¹ 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.

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

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. 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).² *Rothwell*, BLR , BRB No. 14-0044 BLA, slip op. at 4-6.

² When the administrative law judge issued his Order of Remand, employer's appeal of Administrative Law Judge Linda S. Chapman's award of benefits in the miner's claim was pending before the Board. By Decision and Order dated June 27, 2014, the Board affirmed Judge Chapman's award of benefits. *Lester v. Hard Times Mining, Inc.*, BRB No. 13-0451 BLA (June 27, 2014) (unpub.). There is no indication that employer has taken any further action in regard to the miner's claim.

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*.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge