



**RECENT SIGNIFICANT BLACK LUNG BENEFITS ACT DECISIONS**  
**January 2016**

*Stephen R. Henley*  
Chief Judge

*William S. Colwell*  
Associate Chief Judge for Black Lung

*Alexander F. Smith*  
Senior Attorney

**A. Circuit Courts of Appeals**

**[No Decisions to Report]**

**B. Benefits Review Board**

In [\*Sanders v. T C Bell Mining, Inc.\*, BRB No. 15-0151 BLA \(Jan. 13, 2016\) \(unpub.\)](#), which involved an unrepresented Claimant's appeal of an ALJ's denial of benefits in a miner's claim, the ALJ credited Claimant with 8.06 years of underground coal mine employment (CME). Therefore, despite finding that Claimant suffered from a totally disabling respiratory impairment, the ALJ found that Claimant was unable to invoke the 15-year rebuttable presumption of total disability due to pneumoconiosis. Furthermore, the ALJ found that Claimant was unable to establish the existence of pneumoconiosis. Accordingly, the ALJ denied benefits.

On appeal, Claimant generally challenged the denial of benefits. The Benefits Review Board initially addressed the ALJ's finding that Claimant worked for 8.06 years in qualifying CME and therefore was unable to invoke the 15-year rebuttable presumption. After affirming the ALJ's finding that Claimant's aboveground CME was not creditable, the Board turned to the ALJ's consideration of Claimant's underground CME.

According to the ALJ, Claimant could not "recount the specific beginning and ending timeframes of his employment with various companies, and often could only recall a general year date of employment." *Slip op.* at 4-5. Furthermore, the ALJ found the evidence was "unclear as to when claimant's employment started and ended with each company," and that there were "many periods in which claimant worked for less than one year with a specific employer." *Id.* at 5. The ALJ therefore accorded great weight to Claimant's SSA earnings statement and W-2 forms. In utilizing these income records to calculate the length of Claimant's CME, the ALJ used the following method, as summarized by the Board:

The [ALJ] noted that, “where the evidence is ‘insufficient to establish the beginning and ending dates of the miner's [CME], or the miner’s employment lasted less than a calendar year,’ it is permissible to use the formula provided by [20 C.F.R.] §725.101(a)(32)(iii).” Decision and Order at 9; see 20 C.F.R. §725.101(a)(32)(iii). The [ALJ] listed claimant’s employers from 1979 through 1995, totaled claimant’s yearly income, and then divided the yearly income by the coal mine industry’s yearly average for 125 days set forth in Exhibit 610 to the *Office of Workers’ Compensation Programs Coal Mine (BLBA) Procedure Manual*, to credit claimant with 8.06 years in underground [CME].

*Slip op.* at 5 (footnote indicating that Exhibit 610 also contains a daily earnings average by year omitted).

After reviewing Section 725.101(a)(32), the Board noted, without elaboration, that the ALJ “used the average *annual* earnings by year for miners who spent an actual 125 days at a mine site, rather than the *daily* average earnings by year, to credit claimant with 365 days of employment if his income exceeded the industry standard for just 125 days of work.” *Id.* (emphasis in original), citing *Croucher v. Director, OWCP*, 20 BLR 1-67, 1-72-3 (1996) (en banc) (McGranery, J., concurring and dissenting). The Board used the following explanatory parenthetical for the *Croucher* decision: “a mere showing of 125 working days does not establish one year of [CME].” *Id.* Despite the above, the Board affirmed the ALJ’s finding that Claimant was unable to invoke the 15-year presumption “because the evidence of record is insufficient to establish the requisite fifteen years of qualifying [CME] . . . .” *Id.* at 5-6.

Moving to the merits of the case, the Board affirmed, as supported by substantial evidence, the ALJ’s finding that Claimant failed to establish the existence of pneumoconiosis. Accordingly, it affirmed the ALJ’s denial of benefits.

#### **[Definition of Coal Miner and Length of CME, Bureau of Labor Statistics table – Exhibit 610 (new)]**

In [Murdock v. Mountain Laurel Resources Co.](#), BRB No. 15-0169 BLA (Jan. 20, 2016) (unpub.),<sup>1</sup> a case involving a survivor’s claim, the ALJ awarded benefits pursuant to the automatic entitlement provision at Section 422(l) of the Act, 30 U.S.C. §932(l).

On appeal, Employer alleged that the ALJ had inappropriately relied upon Section 932(l) in awarding survivor’s benefits. In support, Employer noted that the underlying miner’s claim remained pending before the OALJ; therefore, in light of Employer’s request for a formal hearing before the OALJ, the District Director’s award is not effective. The Board disagreed, noting that “Section 932(l) requires only that a miner be ‘determined to be eligible to receive benefits . . . at the time of his . . . death.’” *Slip op.* at 3, quoting 30 U.S.C. §932(l) (emphasis in Board decision). Furthermore, its decision in *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141 (2014), clarified that an award in an underlying miner’s claim “need not be final or effective” in order to support an award pursuant to Section 932(l) in a related survivor’s

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<sup>1</sup> It is noted that, later in the month, the Board issued a decision that is substantially similar to *Murdock*. See [Robinson v. Lady H Coal Co.](#), BRB No. 15-02212 BLA (Jan. 27, 2016) (unpub.).

claim. *Slip op.* at 3. Therefore, the Board concluded that, “contrary to employer’s contention, the miner in this case was ‘determined to be eligible to receive benefits’ for the purpose of determining eligibility for derivative benefits under Section 932(l).” *Id.* at 5.

As Employer raised no other contentions of error, the Board affirmed the award pursuant to Section 932(l).

**[Applicability of automatic entitlement, threshold criteria]**