

**IN THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT**

No. 20-3209

MABEL SAMONS
Petitioner

v.

NATIONAL MINES CORPORATION, et al
Respondents

**On Petition for Review of an Order of the Benefits
Review Board, United States Department of Labor**

BRIEF FOR THE FEDERAL RESPONDENT

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STATEMENT REGARDING ORAL ARGUMENT

The Director believes that oral argument is unnecessary with regard to the narrow issue briefed here because “the facts and legal arguments are adequately presented in the briefs and record.” Fed. R. App. P. 34(a)(2)(C). If the Court determines that oral argument is warranted, the Director stands ready to participate.

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BRIEF FOR THE FEDERAL RESPONDENT

STATEMENT OF JURISDICTION

This case involves Petitioner Mabel Samons’s claim for survivor’s benefits and disability benefits on behalf of her deceased husband under the Black Lung Benefits Act (BLBA or the Act), 30 U.S.C. §§ 901-944. Petitioner’s statement of jurisdiction is correct but incomplete because it omits the jurisdictional basis for the Benefits Review Board to decide her appeal from the administrative law judge’s May 3, 2018 decision denying benefits. Appx. at 511-532.¹ The Board

¹ The Appendix consists of three volumes with continual pagination from one volume to the next. This brief will cite to the Appendix as “Appx. at [page number].” For record materials not reproduced in the Appendix, this brief will cite

had jurisdiction because Petitioner filed her appeal on May 16, 2018, *see* Appx. at 57-5, within the 30-day period allowed by 33 U.S.C. § 921(a), as incorporated into the BLBA by 30 U.S.C. § 932(a).

STATEMENT OF THE ISSUE

Petitioner suggests that “the Court could direct an award against the Black Lung Disability Trust Fund” if it “finds meaningful review to be frustrated by the shuffled, incomplete state of the agency’s record[.]” Pet. Br. at 38-39. She correctly points out that several documents—four briefs the parties filed with the ALJ and Board below, the Board’s 2020 decision and order, and her initial claim form requesting survivor’s benefits—are not included in the indexed and searchable electronic record submitted by the Board. With one exception, however, all of those documents are contained in the Appendix. The sole exception is the claim form, which is not relevant to any of the arguments presented in this appeal.

The question presented is whether liability for any benefits awarded in this claim should be transferred to the Black Lung Disability Trust Fund because the record is too disorganized or incomplete to permit meaningful review.²

to the six-volume record the Board filed with the Court on November 20, 2020, (ECF Nos. 32-1 through 32-6) as “R-[volume number] at [page number].”

² The Director takes no position on the other arguments raised in Petitioner’s opening brief.

STATEMENT OF THE CASE

A. Statutory and Regulatory Background

The BLBA provides for disability compensation and medical benefits to coal miners who are totally disabled by pneumoconiosis, commonly referred to as “black lung disease.” 30 U.S.C. § 901(a); 20 C.F.R. § 718.1. Pneumoconiosis is “a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.” 30 U.S.C. § 902(b). Coal miners seeking federal black lung benefits must prove that (1) they suffer from pneumoconiosis; (2) the pneumoconiosis arose out of coal mine employment; (3) they are totally disabled by a respiratory or pulmonary impairment; and (4) the pneumoconiosis contributes to the totally disabling impairment. 20 C.F.R. § 725.202(d); *Buck Creek Coal Co. v. Sexton*, 706 F.3d 756, 758 (6th Cir. 2013). Miners are “totally disabled” if they suffer from a respiratory or pulmonary impairment that prevents them from performing their “usual coal mine work” or other gainful employment requiring comparable skills or abilities. 20 C.F.R. § 718.204(b)(1).

The BLBA also provides benefits to the qualifying survivors of miners who suffered from pneumoconiosis. 20 C.F.R. §§ 718.205; 725.212. The survivors of miners who are awarded BLBA disability benefits are automatically entitled to survivor’s benefits. 30 U.S.C. § 932(l); see *Consolidation Coal Co. v. Maynes*,

739 F.3d 323, 326 (6th Cir. 2014). Other survivors are required to prove that pneumoconiosis caused or hastened the miner's death. 20 C.F.R. § 718.205. Claimants bear the ultimate burden of proof on that issue, 20 C.F.R. § 725.102, but may be aided by certain statutory presumptions. These include section 921(c)(4)'s 15-year presumption, which provides the survivors of totally disabled miners who worked at least 15 years in qualifying mine employment with a rebuttable presumption that the miner's death was due to pneumoconiosis. 30 U.S.C. § 921(c)(4); 20 C.F.R. § 718.305(b), (c)(2); *see Big Branch Resources, Inc. v. Ogle*, 737 F.3d 1063, 1069 (6th Cir. 2013).³

B. Procedural History before the Department of Labor

This case has a long and complex procedural history. Because the Director only addresses the Petitioner's argument that the record is insufficient (*see* Pet. Br. at 38-39), the decisions below are summarized only briefly here. Casey Samons (the Miner) filed a claim for BLBA benefits on March 14, 2003. R-6 at 172-175.⁴

³ The 15-year presumption (which assists miners as well as survivors, *see* 20 C.F.R. § 718.305(c)(1)) is not available in claims filed between January 1, 1981, and January 1, 2005. *See* 20 C.F.R. § 718.305(a); *Regulations Implementing the Byrd Amendments to the Black Lung Benefits Act: Determining Coal Miners' and Survivors' Entitlement to Benefits: Proposed Rule*, 77 Fed. Reg. 19455, 19456-57 (Mar. 30, 2012) (summarizing history of the presumption). It therefore does not apply to Mr. Samons's disability claim, which was filed in 2003. R-6 at 175.

⁴ ECF No. 32-6 at 171-175 (*see* n.1, *supra*).

An OWCP district director issued a proposed decision and order awarding benefits to the Miner on February 20, 2004. R-6 at 62-63. On March 5, 2004, National Mines Corporation (Employer) contested the award and requested a formal hearing before an ALJ. R-6 at 55-56. The case was then transferred to the Office of Administrative Law Judges. R-6 at 12.

On July 7, 2006, while the case was pending before the ALJ, the Miner passed away. R-6 at 997. Petitioner thereafter filed a survivor's claim and the ALJ remanded the Miner's claim to the district director on July 18, 2005, for consolidation with the survivor's claim. R-6 at 751.⁵

The district director issued a proposed decision and order awarding benefits in the survivor's claim on March 7, 2006. R-6 at 795-796. Employer subsequently rejected the district director's decision and requested a hearing before an ALJ. R-6 at 788.

1. The ALJ's 2011 Decision and Order

The ALJ issued an initial decision on January 24, 2011. Appx. 97-141. He denied benefits in the Miner's claim, finding that Petitioner failed to establish the Miner suffered from a totally disabling pulmonary impairment. Appx. at 140. The ALJ also denied benefits in the survivor's claim, finding that Petitioner (a) could

⁵ The claim form filed by Petitioner for survivor's benefits is not in the electronic record, but its absence is not relevant to any of the issues on appeal. *See infra* at 12.

not rely on the 15-year presumption because she failed to show that the Miner was totally disabled; and (b) failed to demonstrate that the Miner's death was due to pneumoconiosis. Appx. at 136-140. Petitioner appealed the denial to the Board.

2. The Board's 2012 Decision and Order

The Board affirmed the ALJ's determination that Petitioner had failed to demonstrate that the Miner's death was due to pneumoconiosis. Appx. at 192-194. But it vacated the ALJ's finding that Petitioner failed to show that the Miner was totally disabled, faulting his analysis of the medical opinion evidence. Appx. at 189-191. The Board therefore remanded the case for further consideration by the ALJ. Appx. at 191, 194.

3. The ALJ's 2013 Decision and Order on Remand

The ALJ issued a decision and order awarding benefits in both the Miner's and survivor's claims on June 25, 2013. Appx. at 243-281. He found that Petitioner had established all of the elements of entitlement (including total disability) in the Miner's disability claim (Appx. at 279), and that she was therefore automatically entitled to survivor's benefits (Appx. at 280-281). Employer appealed both awards.

4. The Board's 2014 Decision and Order

On June 16, 2014, the Board again vacated the ALJ's decision, finding that the ALJ's total disability determination was not supported by substantial evidence.

Appx. at 330-341. The Board concluded that the ALJ had failed to assess the exertional requirements of the Miner's last coal mine job, and therefore did not properly analyze whether the medical opinion evidence demonstrated that the Miner had a pulmonary impairment that precluded him from performing that job. *Id.* at 334-335. The Board remanded the case with instructions for the ALJ to reconsider whether the medical opinion evidence supported a finding of total disability, and to assess whether Petitioner was entitled to survivor's benefits in light of his revised total disability findings. Appx. at 336-340.

5. The ALJ's 2015 Decision and Order on Second Remand

The ALJ issued a decision on August 20, 2015, denying benefits in both claims. Appx. at 388-404. He concluded that the evidence was insufficient to allow him to determine the exertional requirements of the Miner's last coal mine job, and that Petitioner had therefore failed to meet her burden of showing that the Miner was totally disabled. Appx. at 399-401. Petitioner appealed.

6. The Board's 2016 Decision and Order

On July 26, 2016, the Board issued a decision and order finding that the ALJ's total disability rationale was flawed. Appx. at 452-461. The Board held that the ALJ was required to resolve conflicts in the evidence and could take judicial notice of relevant information outside of the record, including the *Dictionary of Occupational Titles*, that could aid him in making a determination of the Miner's

job requirements. Appx. at 459-460.⁶ Accordingly, the Board remanded the case for further consideration.

7. The ALJ's 2018 Decision and Order on Third Remand

The ALJ issued a decision on May 3, 2018 again denying benefits. Appx. at 511-532. Following the Board's remand instructions, the ALJ took judicial notice of the exertional requirements of the Miner's coal mine jobs as described in the *Dictionary of Occupational Titles* to determine the amount of exertion the Miner's last coal mine job required. Appx. at 522-527. Turning to the medical opinion evidence addressing the degree of the Miner's disability, the ALJ concluded that it failed to establish that the Miner was incapable of performing his last mining job. Appx. at 528-530. The ALJ therefore concluded that the evidence failed to establish the Miner was totally disabled and denied benefits. Appx. at 530. Petitioner again appealed to the Board.

8. The Board's 2020 Decision

On January 30, 2020, the Board issued a decision affirming the ALJ's denial of benefits. Appx. at 552-560. This appeal followed.

⁶ The *Dictionary of Occupational Titles* is a Department of Labor publication available at <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDOT>. While it has not been updated since 1991, Mr. Samons's coal-mine work took place long before that point, from 1941-1976. See R-5 at 170-71 (outlining the Miner's employment history).

C. Petitioner's Appeal to this Court

Petitioner appealed from the Board's decision on February 21, 2020. On June 29, Petitioner filed a Motion to Suspend Briefing and Reinstate Interim Benefits Pending Resolution of Problems with the Agency's Record (ECF No. 17-1). The Motion stated that certain documents in the record were not listed in the Certified Index of Documents initially submitted to the Court by the Board (ECF No. 11) and sought an order requiring the Black Lung Disability Trust Fund to pay interim benefits to Petitioner until issues with the record were resolved.⁷

The briefing schedule was suspended pending the resolution of the Motion (ECF No. 20). On July 20, 2020, the Board filed an amended certified index of documents (ECF No. 24). On November 20, in response to Petitioner's request, the Board filed a 6-volume administrative record (ECF No. 32).

⁷ Claimants are entitled to "interim benefits" if a district director, ALJ, the Board, or a court awards BLBA benefits, but the responsible employer fails to pay them (as sometimes happens when the employer appeals an award to a higher tribunal). *See* 20 C.F.R. § 725.420(c). Such benefits are paid by the Black Lung Disability Trust Fund established by 26 U.S.C. § 9501. When the litigation is complete, the responsible operator (if the award is upheld) or the claimant (if the award is overturned) is obligated to reimburse the Trust Fund for any interim benefits paid. *See* 20 C.F.R. §§ 725.540, 725.602-603. The Trust Fund also pays benefits permanently in certain circumstances, including where there is no viable operator to pay them. 26 U.S.C. § 9501(d)(1)(B). Petitioner suggests that any benefits awarded in this case should be paid by the Trust Fund permanently due to the condition of the record. Pet. Br. at 38-39.

This Court denied Petitioner’s motion on December 17, 2020. Appx. at 579-580. The order noted that, while Petitioner initially asserted multiple issues with the record, “she now agrees that the only remaining problem” is that the “record is so disorganized that it will impede our review.” Appx. at 579. The Court rejected the argument, explaining that “while the digital record is not organized chronologically, its index and footers on each page referring back to the index provide sufficient information to facilitate review.” Appx. at 579-580. The Court also denied Petitioner’s request to reinstate interim benefits, holding that the more recent ALJ and Board decisions denying the claim had superseded the district director’s 2006 proposed decision and order and the ALJ’s 2013 award. Appx. at 580. Accordingly, the Court found that abeyance was no longer necessary and the briefing schedule was reset. Appx. at 580.

SUMMARY OF THE ARGUMENT

While the record is not perfect, its imperfections do not present the kind of serious due process violation that might justify transferring liability to the Black Lung Disability Trust Fund. With one exception, all of the documents Petitioner identifies as missing from the indexed and searchable electronic record submitted by the Board are contained in the Appendix. The one exception is Petitioner's initial claim form. But, because the claim form is not relevant to any of the issues presented in this appeal, its absence does not impact the Court's ability to review the decisions below. Liability for any benefits awarded should therefore remain on the Employer.

ARGUMENT

A. Standard of Review

Petitioner's argument that the state of the record may prevent meaningful review presents a legal question subject to plenary review by this Court. *See Brandywine Explosives & Supply v. Director, OWCP*, 790 F.3d 657, 664 (6th Cir. 2015).

B. The Record is Sufficient to Facilitate Review

At the conclusion of her opening brief, Petitioner suggests that liability for any benefits awarded should be transferred to the Black Lung Disability Trust Fund "to the degree that the Court finds meaningful review to be frustrated by the

shuffled, incomplete state of the agency’s record[.]” Pet. Br. at 38-39. While the record is not perfect, there is no basis for imposing this extreme remedy. Indeed, this Court has already considered and rejected Petitioner’s argument that the record is too “shuffled” to permit review. Appx. at 579-580 (“While the digital record is not organized chronologically, its index and footers on each page referring back to the index provide sufficient information to facilitate review.”).

As for the record being “incomplete,” it is true that the indexed and searchable electronic record submitted by the Board does not contain (1) four briefs the private parties submitted to the ALJ and Board; (2) the Board’s 2020 decision and order; and (3) Petitioner’s claim form requesting survivor’s benefits. *See* Pet. Br. at 5 n.2, 14 n.7, 17 nn.11-12. But, except for the claim form, all these materials are before the Court. The ALJ and Board briefs are included in Volume I of the Appendix, and the Board’s decision and order is included in Volume II of the Appendix. Appx. at 3-98, 552-560.

While Petitioner’s claim form should have been included in the record, she has failed to explain how its absence impedes this Court’s review. There is no dispute over whether or when the claim was filed, or any other issue that could be answered by the claim form. And Petitioner does not even allege that she does not have a copy of the form herself.

This is a far cry from the situation presented in the only case Petitioner cites in this section of her brief, *Island Coal Creek v. Holdman*, 202 F.3d 873 (6th Cir. 2000). In *Holdman*, the Department of Labor lost critical documents (including the claimant’s hearing testimony) that the ALJ believed “were important to the resolution of Holdman’s contested claim.” *Id.* at 883. This Court agreed with the ALJ that the absence of this evidence violated the employer’s core due-process right to a fair day in court. *Id.* at 884 (citation omitted). It accordingly held that liability for the claim should be transferred from the employer to the Black Lung Disability Trust Fund. *Id.*

Because Petitioner’s claim form is in no way relevant to the issues presented in this appeal, its absence from the record does not violate the Petitioner’s (or the Employer’s) due process rights. As then-Judge Gorsuch explained in rejecting another attempt to shift liability to the Black Lung Disability Trust Fund on due process grounds, “the Constitution is concerned with procedural outrages, not procedural glitches.” *Energy West Mining Co v. Oliver*, 555 F.3d 1211, 1219 (10th Cir. 2009). The absence of the claim form from the electronic record here is a glitch, not an outrage. This Court should therefore decline Petitioner’s invitation to shift liability to the Black Lung Disability Trust Fund if benefits are awarded.

CONCLUSION

For the reasons discussed above, the record here is sufficient for the Court to engage in meaningful review of this case.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I certify that this brief is proportionately spaced, using Times New Roman 14-point typeface, and, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii), contains 2834 words as counted by Microsoft Office Word 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2021, the Director's brief was served electronically using the Court's CM/ECF system on the Court and the following:

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