

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1232

DAISY BROWN,

Petitioner,

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS; WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND; MACK COAL COMPANY, INCORPORATED,

Respondents.

On Petition for Review of an Order of the Benefits Review Board.
(07-0308-BLA)

Submitted: September 15, 2008 Decided: January 26, 2009

Before NIEMEYER and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Petition granted; reversed and remanded by unpublished per curiam opinion.

S. F. Raymond Smith, JULIET RUNDLE & ASSOCIATES, Pineville, West Virginia, for Petitioner. Christopher M. Hunter, JACKSON KELLY PLLC, Charleston, West Virginia, for Respondents West Virginia Coal Workers' Pneumoconiosis Fund and Mack Coal Company, Incorporated.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Daisy Brown seeks review of the Benefits Review Board's decision and order reversing the administrative law judge's award of survivor's black lung benefits pursuant to 30 U.S.C. §§ 901-945 (2000). Our review of the record discloses that Mr. Brown received an award of black lung benefits during his lifetime. He was admitted to hospice care with a terminal diagnosis of pneumoconiosis and the death certificate stated that his death was caused by "chronic obstructive pulmonary disease due to or as a consequence of black lung disease." We find that the decision of the administrative law judge is based upon substantial evidence and is without reversible error. Accordingly, we grant the petition for review, reverse the decision of the Board, and remand for the award of survivor's benefits to Mrs. Brown. Brown v. Dir., Office of Workers' Comp. Programs, No. 07-0308-BLA (B.R.B. Dec. 31, 2007). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION GRANTED;
REVERSED AND REMANDED