

BRB Nos. 08-0213
and 08-0213A

M.M. (widow of N.M.))	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
UNIVERSAL MARITIME APM)	DATE ISSUED: 06/27/2008
TERMINALS)	
)	
and)	
)	
SIGNAL MUTUAL)	
INDEMNITY ASSOCIATION,)	
LIMITED)	ORDER on
)	MOTION to DISMISS
Employer/Carrier-)	and
Respondents)	MOTION to CHANGE NAME
Cross-Petitioner)	of PETITIONER

Employer has filed a Motion to Dismiss the appeal captioned *N.M. (deceased) v. Universal Maritime Services Corp.*, BRB No. 08-0213, filed on November 16, 2007, and acknowledged by the Board on December 14, 2007. Employer argues that the appeal is not properly before the Board, as the employee (decedent) died on October 26, 2007, prior to the filing of the Notice of Appeal, and thus counsel was not authorized to file an appeal. Decedent's widow's counsel responds, urging the Board to deny employer's motion, and he filed a Motion to Change Name of Petitioner to substitute decedent's widow as "claimant" on behalf of decedent's estate. Employer asserts that the belated Motion to Change Name of Petitioner cannot correct the jurisdictional defect.¹ We deny employer's Motion to Dismiss, and we grant counsel's Motion to Change Name of Petitioner.

¹Employer's Motion to Dismiss was filed on January 25, 2008. The widow's Motion to Change Name of Petitioner was filed on February 1, 2008, as she was named personal representative of decedent's estate by the State of Maryland on January 29, 2008.

Section 19(f) of the Act, 33 U.S.C. §919(f), provides that benefits may be paid after the death of an injured employee. *See, e.g., Andrews v. Alabama Dry Dock & Shipbuilding Co.*, 17 BRBS 209 (1985); *Wilson v. Vecco Concrete Constr. Co.*, 16 BRBS 22 (1983). Thus, claims under the Act may continue following the death of the injured employee and are not abated. *Williams v. Donovan*, 198 F.Supp. 237 (E.D.La. 1961). Indeed, federal statutes are construed liberally in favor of survival of the claim. *Id.* To this end, substitution of parties is permitted under federal rules of procedure as well as pursuant to the Board's rules of procedure. Fed. R. App. P. 43; Fed. R. Civ. P. 25; 20 C.F.R. §802.402(b). The Board's regulations provide:

An appeal may be dismissed on the death of a party only if the record affirmatively shows that there is no person who wishes to continue the action and whose rights may be prejudiced by dismissal.

20 C.F.R. §802.402(b); *see Clarke v. Director, OWCP*, 11 BLR 1-169 (1988) (citing 20 C.F.R. §§725.360(b), 725.545(c)-(e), 802.402(b)). The record before us contains no evidence of the absence of an interested party. Decedent's widow, "a person who wishes to continue the action" as the representative of decedent's estate, has indicated that she wishes to pursue the appeal on the estate's behalf.

Furthermore, guidance is found in the Federal Rules of Appellate Procedure (FRAP). Despite the general rule that an attorney's agency to act ceases with the death of the client such that the attorney thereafter has no power to continue or terminate an action on his own initiative, *see Fariss v. Lynchburg Foundry*, 769 F.2d 958 (4th Cir. 1985), FRAP 43(a)(2) provides:

If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative – or if there is no personal representative, the decedent's attorney of record – may file a notice of appeal within the time prescribed by these rules.

Fed. R. App. P. 43(a)(2); *see Slade for the Estate of Slade v. U.S. Postal Service*, 952 F.2d 357 (10th Cir. 1991); *see also* 33 U.S.C. §923(a) (Board not bound by technical rules of procedure but should proceed in a way that best protects the rights of the parties). In this case, it is undisputed that decedent's counsel filed a timely appeal with the Board, albeit after decedent died. Pursuant to Rule 43(a)(2), this is a permissible action.

As the Board's regulations permit the continuation of a case following the death of an injured employee, and as the FRAP permit an appeal by a decedent's attorney in order to preserve the estate's rights, we deny employer's motion to dismiss this appeal. We grant the motion to change the caption to reflect that decedent's widow, as the

representative of his estate, is now the claimant/petitioner in this case. The caption of this case shall be as set forth in the style of this order.²

The Board is in receipt of claimant's petition for review and brief and employer's response thereto in BRB No. 08-0213. The Board is also in receipt of employer's petition for review and brief in BRB No. 08-0213A. Claimant may file a brief in response to employer's appeal within 30 days of receipt of this order. 20 C.F.R. §802.212.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

²Previously, employer was designated as "Universal Maritime Services Corporation." In its communications with the Board, it has entitled itself "Universal Maritime APM Terminals." We shall use this name in the caption accordingly.