BRB Nos. 06-0943 BLA
and 06-0893 BLA

DORIS VANDALL (Survivor of and on behalf of AMOS VANDALL) Claimant-Respondent v. SEWELL COAL COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 08/24/2007 DECISION and ORDER

Appeal of the Decision and Order Granting Request for Modification and Decision and Order Granting Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Renae Reed Patrick (Washington and Lee University Legal Clinic), Lexington, Virginia, for claimant.

Douglas A. Smoot and Kathy L. Snyder (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Granting Request for Modification (04-BLA-64) and Decision and Order Granting Benefits (04-BLA-5580) of Administrative Law Judge Alice M. Craft (the administrative law judge) awarding benefits on modification of a miner's duplicate claim and on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as

amended, 30 U.S.C. §901 *et seq.* (the Act).[1] The miner passed away on January 4, 2001, and on February 28, 2001, claimant, the miner's widow, filed her claim for survivor's benefits. Director's Exhibit 131. On April 10, 2001, claimant filed a request for modification of the denial of the miner's duplicate claim, and submitted additional medical evidence in support of her request.[2] Director's Exhibit 121.

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 725 and 726 (2002).

[2] The current claim is the miner's third. The miner's first claim, filed on August 7, 1972, was finally denied on October 24, 1980, because the miner failed to establish total disability due to pneumoconiosis. Director's Exhibits 70-1, 70-21. The miner's second claim, filed on December 2, 1985, was finally denied on August 3, 1990, because the miner failed to establish a material change in conditions since the prior denial of benefits pursuant to 20 C.F.R. §725.309(d) (2000). Director's Exhibits 71-1, 71-54.

On July 22, 1992 the miner filed the instant claim, which was denied by Administrative Law Judge Mollie W. Neal on September 23, 1994 because the miner failed to establish the existence of pneumoconiosis. Director's Exhibits 4, 49. The miner appealed, and initially, the Board affirmed Judge Neal's denial of benefits. *Vandall v. Sewell Coal Co.*, BRB No. 95-0118 BLA (Aug. 23, 1995)(unpub.); Director's Exhibit 57. However, on reconsideration, the Board vacated the denial of benefits because employer's stipulation to the existence of a totally disabling respiratory impairment established a material change in conditions since the prior denial of benefits pursuant to 20 C.F.R. §725.309(d) (2000). Thus, the Board remanded the case for consideration of the merits of entitlement. *Vandall v. Sewell Coal Co.*, BRB No. 95-0118 BLA (Jan. 9, 1997)(unpub.); Director's Exhibit 61.

On remand, in a decision dated June 26, 1998, Judge Neal found that the evidence did not establish the existence of pneumoconiosis, or that the miner's total disability was due to pneumoconiosis, and denied benefits. Director's Exhibit 62. The miner requested modification on November 24, 1994. Director's Exhibits 63, 67, 68, 72. In a decision dated August 7, 2000, Administrative Law Judge Robert J. Lesniak denied the miner's claim because the evidence did not establish either the existence of pneumoconiosis or that the miner's total disability was due to pneumoconiosis. Director's Exhibit 114.

On September 2, 2000, the miner appealed to the Board, but on January 4, 2001, prior to the resolution of his appeal, the miner passed away. Director's Exhibits 117, 118. On February 19, 2001, claimant filed her claim for survivor's benefits, and on April 10, 2001, she requested modification of the denial of the miner's claim. Director's

The administrative law judge credited the miner with at least twenty-five years of coal mine employment[3] and found that claimant established that the miner had clinical pneumoconiosis at 20 C.F.R. §718.202(a)(2), and thus found that, to the extent the prior administrative law judge who denied the miner's claim had found the evidence insufficient to establish the existence of either clinical or legal pneumoconiosis, his decision was in error. 20 C.F.R. §725.310. The administrative law judge further found that claimant established that the miner's severe obstructive lung disease was related to coal dust exposure, and, therefore, also established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Finally, the administrative law judge found that claimant established that the miner's legal pneumoconiosis was a substantially contributing cause of the miner's totally disabling respiratory impairment, pursuant to 20 C.F.R. §718.204(c), and hastened the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge granted claimant's request for modification of the denial of the miner's claim pursuant to 20 C.F.R. §725.310 (2000), and awarded benefits on the survivor's claim.

On appeal, employer initially contends that the administrative law judge erred in declining to consider, in the survivor's claim, certain medical evidence that had been submitted in support of the living miner's claim. Employer further contends that the administrative law judge erred in her analysis of the medical opinion evidence relevant to the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), and the cause of the miner's totally disabling respiratory impairment and death pursuant to 20 C.F.R. §§718.204(c), 718.205(c). Claimant responds, urging affirmance of the administrative law judge's award of benefits in both the miner's and survivor's claims. The Director,

---

Exhibit 107. Accordingly, the Board dismissed the miner's appeal and remanded the case to the district director for modification proceedings. Director's Exhibit 122. Both the miner's claim and the survivor's claim were denied by the district director, and on January 5, 2004, both claims were referred to the Office of Administrative Law Judges for a hearing. Director's Exhibits 152-153. Based on the date of filing, Administrative Law Judge Alice M. Craft (the administrative law judge) determined that different versions of the regulations govern the miner's claim and the survivor's claim. Therefore, the administrative law judge held separate hearings and issued separate decisions for the two claims.

[3] The record indicates that the miner's coal mine employment occurred in West Virginia. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer initially contends that in evaluating the survivor's claim, the administrative law judge abused her discretion in declining to consider evidence submitted by employer in the miner's claim as in excess of the limitations set forth at 20 C.F.R. §725.414. Employer specifically contends that the regulation at 20 C.F.R. §725.460, providing that where claims are consolidated for hearing, evidence introduced in one claim may be considered to have been offered into evidence in the other claim, requires the consideration of all the evidence introduced in both claims. Employer's Brief at 35. Employer further asserts that the interpretation of the regulation to require joint consideration of all of the evidence submitted in both claims is consistent with the decision of the United States Court of Appeals for the Fourth Circuit in *Boyd and Stevenson Coal Co. v. Director, OWCP* [*Slone*], 407 F.3d 663, 668, 23 BLR 2-288, 2-299 (4th Cir. 2005)(holding that survivor's claims are derivative of the original miner's claim) and the requirement of the Act that "all relevant evidence shall be considered . . . ." 30 U.S.C. §923(b); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); Employer's Brief at 35-36. Employer's arguments are without merit.

First, 20 C.F.R. §725.460 is inapplicable to the instant miner's and survivor's claims, which were not consolidated. Second, the Board has held that the regulation at 20 C.F.R. §725.460 does not provide that evidence introduced in one claim is considered to have been *admitted* into evidence in the other claim. *Keener v. Peerless Eagle Coal Co.*, BLR , BRB No. 05-1008 BLA (Jan. 25, 2007)(*en banc*). Rather 20 C.F.R. §725.460 must be read in conjunction with the evidentiary limitations of 20 C.F.R. §725.414, and, consequently, the evidence must be considered in accordance with the limitations for each claim. Third, employer's reliance on *Slone* is misplaced. *Slone* involved the timeliness of a survivor's claim, filed prior to the enactment of the revised regulations, for the purpose of determining the survivor's entitlement to insurance benefits. *See Slone*, 407 F.3d at 664, 23 BLR at 2-291. Thus, *Slone* is factually distinguishable from the instant case. Finally, the Fourth Circuit recently held in *Elm Grove Coal Co. v. Director, OWCP* [*Blake*], 480 F.3d 278, 23 BLR 2-430 (4th Cir. 2007) that the evidentiary limitations at 20 C.F.R. §725.414 are a reasonable and valid exercise of the Secretary's authority to regulate evidentiary development in Black Lung Act

proceedings, that they are based on a permissible construction of the Act, and that they are neither arbitrary, capricious, nor manifestly contrary to the statute. Thus, under the facts of this case, the administrative law judge properly declined to consider all of the evidence submitted with the living miner's claim when considering the survivor's claim.

Turning to the merits, in order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that the miner was totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner's death, or was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR at 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Claimant may establish modification by establishing either a change in conditions since the issuance of the previous denial or a mistake in a determination of fact in a previous denial. 20 C.F.R. §725.310(a) (2000). In considering whether a change in conditions has been established pursuant to Section 725.310 (2000), an administrative law judge is obligated to perform an independent assessment of the newly submitted evidence, considered in conjunction with the previously submitted evidence, to determine if the weight of the new evidence is sufficient to establish at least one element of entitlement which defeated entitlement in the prior decision. 20 C.F.R. §725.310 (2000); *see Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 497, 22 BLR 2-1, 2-11 (4th Cir. 1999); *Jessee v. Director, OWCP*, 5 F.3d 723, 725, 18 BLR 2-26, 2-28 (4th Cir. 1993); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993). In considering a request for modification of a duplicate claim (which has been denied based upon a failure to establish a material change in conditions), an administrative law judge must determine whether all of the evidence developed in the duplicate claim, including the new evidence submitted with the request for modification, establishes a material change in conditions. *See* 20 C.F.R. §725.309(d) (2000); *Hess v. Director, OWCP*, 21 BLR 1-141, 1-143 (1998); *Nataloni*, 17 BLR at 1-84. If the evidence establishes a material change in

conditions, the administrative law judge must then consider the merits of the duplicate claim. *Hess*, 21 BLR at 1-143.

Employer contends that in evaluating the medical opinion evidence relevant to the existence of legal pneumoconiosis in the miner's and survivor's claims pursuant to 20 C.F.R. §§718.202(a)(4), 718.205(a)(1), the administrative law judge erred in according less weight to the opinions of employer's physicians on the grounds that they were hostile to the Act. Employer further contends that the administrative law judge mischaracterized and selectively analyzed the evidence, and may have misallocated the burden of proof, and that, therefore, the administrative law judge's evaluation of the medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4) does not comport with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). Employer's arguments have merit.

In determining whether claimant established the existence of legal pneumoconiosis in both the miner's and survivor's claims, the administrative law judge relied upon the holding of the United States Court of Appeals for the Fourth Circuit in *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995), that "chronic obstructive lung disease . . . is encompassed within the definition of pneumoconiosis for the purpose of entitlement to Black Lung Benefits," and that "the opinion of an expert 'that breathing coal mine dust does not cause chronic obstructive lung disease . . . must be considered bizarre in view of [ ] Congress' explicit finding to the contrary.'" *Warth*, 60 F.3d at 174-5, 19 BLR at 2-269; Decision and Order Granting Request for Modification at 18-19; Decision and Order Granting Benefits at 14. The administrative law judge further noted that the court's holding is consistent with the Department of Labor's position underlying the amended regulations, that coal mine dust exposure can cause obstructive lung disease. 65 Fed. Reg. 79943; Decision and Order Granting Request for Modification at 19; Decision and Order Granting Benefits at 14.

Evaluating the conflicting medical opinions relevant to the existence of legal pneumoconiosis submitted in support of the miner's claim, the administrative law judge then discounted the opinions of Drs. Tomashefski, Oesterling, Bush, Zaldivar, Fino, Dahhan, Chillag, and Castle, that the miner's obstructive lung disease is due to asthma and emphysema, unrelated to coal dust exposure, because they "all expressed the 'bizarre' view that coal dust exposure does not cause obstructive lung disease." Decision and Order Granting Request for Modification at 19. Similarly, in the survivor's claim, the administrative law judge accorded less weight to the same opinions from Drs. Tomashefski, Bush, Zaldivar, and Dahhan, because they "rejected the possibility that coal dust contributed to [the miner's] obstructive lung disease." Decision and Order Granting Benefits at 14. As employer correctly asserts, however, none of these physicians, in reports submitted in support of either the miner's or survivor's claims, stated that coal

dust exposure cannot cause obstructive lung disease. Additionally, in finding their opinions to be "inconsistent with the premise underlying the statute and regulations, that exposure to coal dust can cause chronic obstructive air disease . . . ", the administrative law judge did not identify, with citations to the record, the specific portions of the physicians' opinions she relied upon in reaching this conclusion. Decision and Order Granting Request for Modification at 19; Decision and Order Granting Benefits at 14-15. Moreover, the administrative law judge failed to acknowledge that in their reports submitted in the miner's claim, Drs. Zaldivar, Fino, Dahhan, and Castle each opined that coal dust exposure, and/or coal workers' pneumoconiosis, *can* cause an obstructive lung impairment, but explained why they believed it had not contributed to the miner's obstructive lung disease in this case. Director's Exhibits 84, 89-91, 100-102.

The APA requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439, 21 BLR 2-269, 2-272 (4th Cir. 1997); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Moreover, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that an administrative law judge must adequately explain the reasons for crediting certain evidence and discrediting other evidence. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Akers*, 131 F.3d at 439, 21 BLR at 2-272. The administrative law judge's conclusions reflect a selective analysis and, to a degree, a mischaracterization of the evidence. In addition, the administrative law judge failed to support her conclusion that the opinions of employer's physicians were "inconsistent with the premise . . . that exposure to coal dust can cause chronic obstructive air disease," with specific references to the medical opinions in question, or to address the explanations provided by the physicians for their conclusions that the miner's obstructive impairment was unrelated to coal dust exposure. Decision and Order Granting Request for Modification at 19; Decision and Order Granting Benefits at 15. Therefore, we hold that the administrative law judge's findings are unsupported by the record and contrary to law. *Hicks*, 138 F.3d at 524, 21 BLR at 2-323; *Akers*, 131 F.3d at 439, 21 BLR at 2-272.

Employer next contends that the administrative law judge erred in discounting "the doctors relied upon by the Employer", because "their reliance on an exaggerated smoking history undermines the conclusions they reached." Decision and Order Granting Request for Modification at 19; Decision and Order Granting Benefits at 14. Specifically, in both the miner's and survivor's claim, the administrative law judge determined that while she found the credible evidence supported, at most, a three and one-half to seven pack-year smoking history, employer's physicians relied upon "a much longer smoking history (up to 22 years) . . . ." Decision and Order Granting Request for Modification at 19; Decision and Order Granting Benefits at 14. In addition, the administrative law judge went on to state that none of these physicians "addressed the

fact that [the miner] ceased smoking many years before he stopped mining" or "offered any convincing explanation why coal dust should be eliminated as a cause of [the miner's] emphysema, even if he smoked as much as they thought," and that "[t]heir failure to do so, coupled with their complete dismissal of any effects from pneumoconiosis, leads me to the conclusion that their opinions are less than objective." Decision and Order Granting Request for Modification at 19; Decision and Order Granting Benefits at 14.

As employer asserts, however, neither Dr. Bush nor Dr. Dahhan attributed any portion of the miner's disease or impairment to smoking. Director's Exhibits 34, 38, 44, 84, 89, 95, 102; Employer's Exhibits 2, 6, 8. In addition, Drs. Tomashefski, Oesterling, Zaldivar, Fino, Chillag, Castle, and Caffrey each quantified the miner's smoking history as variable, ranging from zero to one-half pack a day for twenty-two years, and each thoroughly explained, with reference to the objective test results and pathology evidence, and irrespective of the miner's exact smoking history, why they had determined that coal dust exposure had not contributed to the miner's obstructive airway disease. Director's Exhibits 31, 38, 39, 44, 71-44, 71-45, 81, 88, 93, 94, 95, 100, 101; Employer's Exhibits 1, 3-5, 10. Again, the administrative law judge's conclusions reflect a selective analysis and, to a degree, a mischaracterization of the physicians' opinions. In addition, the administrative law judge's finding that employer's physicians are "less than objective," without discussing the detailed explanations they provided, is a violation of the APA.[4] 5 U.S.C. §557(c)(3)(A); *Hicks*, 138 F.3d at 524, 21 BLR at 2-323; *Akers*, 131 F.3d at 439, 21 BLR at 2-272.

Finally, the administrative law judge determined that the credibility of employer's physicians "is also undermined by the fact that none diagnosed even clinical pneumoconiosis during [the miner's] lifetime" while the autopsy results confirmed the presence of the disease. Decision and Order Granting Request for Modification at 20; Decision and Order Granting Benefits at 15. By contrast, the administrative law judge accorded greater weight to the opinions of Drs. Rasmussen, Perper, Quadri, and Koenig, and the death certificate prepared by Dr. Bembalker, as she found them "better supported by the evidence as a whole." Decision and Order Granting Request for Modification at 20; Decision and Order Granting Benefits at 15. Employer challenges these findings by the administrative law judge as irrational and in violation of the APA. We agree.

[4] We reject, however, employer's additional argument that the administrative law judge was bound to accept the prior smoking history findings of Judge Neal. Modification permits the correction of mistaken factual findings, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted. *Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 497, 22 BLR 2-1, 2-11 (4th Cir. 1999).

As employer contends, the administrative law judge's discrediting of employer's physicians' opinions regarding the existence of legal pneumoconiosis, on the grounds that they did not diagnose clinical pneumoconiosis prior to reviewing the autopsy evidence, is irrational. The administrative law judge did not explain why the physicians' acknowledgement that the autopsy results revealed a mild degree of pneumoconiosis not clearly identifiable radiographically during the miner's life, negatively impacted their opinions that coal dust exposure did not contribute to the miner's asthma and emphysema. In addition, as employer also correctly asserts, in crediting the opinions of Drs. Rasmussen, Perper, Quadri, Koenig, and Bembalker, the administrative law judge did not subject their opinions to the same scrutiny as employer's physicians' opinions. *See Hughes v. Clinchfield Coal Co.*, 21 BLR 1-135, 1-139 (1999)(*en banc*); *see also Akers*, 131 F.3d at 441, 21 BLR at 2-274. Specifically, the administrative law judge did not determine whether their opinions are reasoned and documented, or explain what "evidence as a whole" better supports their opinions as to the role of coal dust exposure in the development of the miner's obstructive lung disease. *See Sparks*, 213 F.3d at 192, 22 BLR at 2-263 (holding that a mere reference on a death certificate to pneumoconiosis as contributing to death does not constitute a reasoned medical opinion); *Hicks*, 138 F.3d at 524, 21 BLR at 2-323; *Akers*, 131 F.3d at 439, 21 BLR at 2-272. The administrative law judge's uncritical acceptance of the opinions of Drs. Rasmussen, Perper, Quadri, and Koenig, and the death certificate prepared by Dr. Bembalker, in contrast with her treatment of the contrary opinions submitted by employer, gives the appearance that the administrative law judge placed the burden of proof on employer, to rule out coal dust exposure as a cause of the miner's obstructive lung disease, rather than requiring claimant to establish entitlement through credible medical evidence. Therefore, we must vacate the administrative law judge's findings at 20 C.F.R. §§718.202(a)(4), 718.205(a)(1), and remand this case for further consideration and discussion of all the relevant medical opinion evidence in both the miner's and survivor's claim. 5 U.S.C. §557(c)(3)(A); *Hicks*, 138 F.3d at 524, 21 BLR at 2-323; *Akers*, 131 F.3d at 439, 21 BLR at 2-272. The administrative law judge's analysis of the evidence must be supported by sufficient and correct rationale.

Employer next challenges the administrative law judge's determinations, pursuant to 20 C.F.R. §§718.204(c) and 718.205(c), that the medical evidence of record established that the miner's totally disabling respiratory impairment and death were due to pneumoconiosis. With regard to disability causation, a miner is totally disabled due to pneumoconiosis if pneumoconiosis:

> is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:
> (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or

> (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-17 (2003). A physician's unequivocal opinion that pneumoconiosis is one of two causes of a miner's totally disabling respiratory impairment is legally sufficient to establish that pneumoconiosis is a "substantially contributing cause" of the miner's total disability. *Gross*, 23 BLR at 1-18-19. Regarding death causation, as noted above, pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Sparks*, 213 F.3d at 190, 22 BLR at 2-259.

The administrative law judge's findings regarding disability causation and death due to pneumoconiosis at 20 C.F.R. §§718.204(c) and 718.205(c), respectively, are largely dependent on her findings that claimant established the existence of legal pneumoconiosis at 20 C.F.R. §§718.202(a)(4), 718.205(a)(1), which we have vacated. Therefore, we also vacate the administrative law judge's findings regarding disability causation and death due to pneumoconiosis at 20 C.F.R. §§718.204(c) and 718.205(c), respectively, and instruct her to reweigh the relevant evidence under the proper causation standards.

Accordingly, the administrative law judge's Decision and Order Granting Request for Modification and Decision and Order Granting Benefits are affirmed in part and vacated in part, and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge