



BRB Nos. 15-0262 BLA and  
15-0263 BLA

SHEILA ASHLEY	)	
(Widow of and o/b/o BENNIE ASHLEY)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY	)	DATE ISSUED: 03/30/2016
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits in Living Miner's Claim and Survivor's Claim of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Paul E. Frampton and Thomas M. Hancock (Bowles Rice LLP), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits in Living Miner's Claim and Survivor's Claim (2011-BLA-5950, 2013-BLA-5539) of Administrative Law Judge Linda S. Chapman, rendered on a subsequent miner's claim<sup>1</sup> and a survivor's claim<sup>2</sup> filed pursuant to provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). In the miner's claim, the administrative law judge credited the miner with 21.71 years of coal mine employment, based on the parties' stipulation. The administrative law judge thereafter determined that the miner had pneumoconiosis based on the pathology evidence, establishing a change in an applicable condition of entitlement under 20 C.F.R. §725.309. The administrative law judge further found that the medical opinion evidence was sufficient to establish that the miner had a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge therefore determined that the rebuttable presumption of total disability due to pneumoconiosis set forth in Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012), was invoked.<sup>3</sup> The administrative law judge further found that employer did not rebut the presumption and awarded benefits accordingly.

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<sup>1</sup> The miner filed his initial claim for benefits on July 7, 1997, which was denied by Administrative Law Judge Mollie Neal on January 25, 1999. Miner's Claim (MC) Director's Exhibit 1. The miner filed a request for modification, which was denied by the district director on February 2, 2000. *Id.* The miner filed an additional request for modification, which he later withdrew. *Id.* The miner took no further action until he filed the present subsequent claim on June 2, 2010. MC Director's Exhibit 3. The miner died on November 8, 2012, while his claim was pending. Survivor's Claim (SC) Director's Exhibit 5.

<sup>2</sup> Claimant, the widow of the miner, filed her claim for survivor's benefits on December 5, 2012, and is continuing to pursue the miner's claim on her husband's behalf. SC Director's Exhibit 1. The district director issued a proposed Decision and Order awarding benefits in the survivor's claim on January 3, 2013, and employer requested a hearing. SC Director's Exhibits 7, 8. On February 26, 2013, the district director requested that the survivor's claim be associated with the miner's claim pending at the Office of Administrative Law Judges. SC Director's Exhibit 12.

<sup>3</sup> Under Section 411(c)(4) of the Act, a miner's total disability or death is presumed to be due to pneumoconiosis if he or she had at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305(b).

As it relates to the survivor's claim, the administrative law judge found that claimant established that the miner had pneumoconiosis arising out of coal mine employment based on the autopsy findings and that the miner was totally disabled. The administrative law judge therefore determined that claimant invoked the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis, and found that employer did not rebut it. Consequently, the administrative law judge awarded benefits in the survivor's claim.

On appeal, employer argues that the administrative law judge erred in finding total disability established and in invoking the presumption. Employer also asserts that the administrative law judge erred in finding that it did not rebut the presumed existence of legal pneumoconiosis and the presumed causal connection between pneumoconiosis and the miner's total disability and death. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a substantive response brief in this appeal.<sup>4</sup>

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.<sup>5</sup> 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

## **I. The Miner's Claim**

### **A. Invocation of the Presumption – 20 C.F.R. §718.204(b)(2)**

The regulations provide that a miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a miner's disability is established by: 1) pulmonary function studies showing values equal to or less than those listed in Appendix B to 20 C.F.R Part 718; 2) arterial blood gas studies showing values equal to or less than those listed in Appendix

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<sup>4</sup> We affirm, as unchallenged on appeal, the administrative law judge's finding that the miner had 21.71 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

<sup>5</sup> The record reflects that claimant's coal mine employment was in Virginia. MC Director's Exhibits 1, 4. 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).

C to 20 C.F.R. Part 718; 3) the presence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure; or 4) a physician exercising reasoned medical judgment concluding that a miner's respiratory or pulmonary condition is totally disabling. 20 C.F.R. §718.204(b)(2)(i)-(iv). If an administrative law judge finds that total disability has been established under one or more subsections, he or she must weigh the evidence supportive of a finding of total disability against the contrary probative evidence of record. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-20-21 (1987); *Tanner v. Freeman United Coal Co.*, 10 BLR 1-85, 1-87 (1987).

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge determined that the two pulmonary function studies of record, dated September 8, 2010 and November 30, 2011, were non-qualifying.<sup>6</sup> Decision and Order at 21; Miner's Claim (MC) Director's Exhibit 11; Employer's Exhibit 4.<sup>7</sup> She further found that the resting blood gas study performed by Dr. Defore on September 8, 2010 was qualifying, but the resting study performed by Dr. Castle on November 30, 2011 did not produce qualifying values. Decision and Order at 21; MC Director's Exhibit 12; Employer's Exhibit 4. Because one study was qualifying, while the more recent study was non-qualifying, the administrative law judge determined that the blood gas study evidence was in equipoise, and she concluded that total disability was not established at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 21-22. Pursuant to 20 C.F.R. §718.204(b)(2)(iii), the administrative law judge found that there was no evidence of cor pulmonale with right-sided congestive heart failure. *Id.* at 22.

The administrative law judge then considered the medical opinions of Drs. Defore, Perper, Oesterling, Castle, and Rosenberg under 20 C.F.R. §718.204(b)(2)(iv).<sup>8</sup> Decision

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<sup>6</sup> A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the values listed in Appendices B and C to 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

<sup>7</sup> Claimant and employer submitted the same exhibits, with same exhibit numbers, in the miner's claim and the survivor's claim.

<sup>8</sup> The administrative law judge also referred to the pathology reports submitted by Drs. Pierce and Caffrey. Decision and Order at 23; Claimant's Exhibit 3; Employer's Exhibits 6, 12. The administrative law judge determined that neither physician addressed the issue of total disability. *Id.* In addition, the administrative law judge found that claimant's lay testimony could not provide a basis for a finding of total disability because the miner's benefits would be augmented on her behalf. Decision and Order at 22, *citing* 20 C.F.R. §718.204(d)(2). The administrative law judge further determined that the miner's treatment records do not support a finding that he suffered from a totally

and Order at 22-23. Dr. Defore examined the miner on September 28, 2010, and diagnosed a totally disabling respiratory impairment based on the qualifying blood gas study that she performed. MC Director's Exhibit 11. The administrative law judge found that her opinion was entitled to little weight because she relied primarily on the qualifying blood gas study, which the administrative law judge determined was in equipoise with the non-qualifying study. Decision and Order at 22.

Dr. Perper performed a record review after the miner's death on November 8, 2012. Claimant's Exhibit 5. The administrative law judge gave less weight to his opinion that the miner was totally disabled because she found that he did not explain the basis for his diagnosis, which was contradicted by the objective evidence in the record. Decision and Order at 22.

Dr. Oesterling reviewed tissue slides and the miner's medical records after the miner's death, and stated that cancer and moderately severe emphysema caused "respiratory disability." Employer's Exhibits 6, 12. When summarizing Dr. Oesterling's opinion, the administrative law judge stated, "I note that the Employer submitted medical opinion reports from Dr. Castle and Dr. Rosenberg, and thus Dr. Oesterling's review of the medical evidence, which constitutes a third medical opinion report, exceeds the Employer's evidentiary limitations. I will consider Dr. Oesterling's report only to the extent it discusses his findings on his examination of the tissue slides." Decision and Order at 17. Nevertheless, pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge credited Dr. Oesterling's finding that the miner's moderately severe emphysema and cancer caused total respiratory disability. *Id.* at 23.

Dr. Castle, who examined the miner on November 30, 2011, and Dr. Rosenberg, who performed a record review after the miner's death, both opined that objective testing established that the miner did not have a totally disabling respiratory impairment. Employer's Exhibits 4, 5, 9, 10. The administrative law judge found that, "at least as far as they establish [the miner's] respiratory condition up to November 2011, the date of Dr. Castle's examination," these opinions were well-reasoned and supported by the objective evidence, and thus accorded them significant weight. Decision and Order at 22; Employer's Exhibits 4, 5, 9, 10. With respect to the period between November 2011 and the miner's death in November 2012, the administrative law judge observed that both Dr. Castle and Dr. Rosenberg testified at deposition that the miner was disabled by the metastatic esophageal cancer in his lungs. Decision and Order at 23; Employer's Exhibits 9 at 22, 10 at 9. The administrative law judge concluded:

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disabling respiratory impairment in the year before his death. Decision and Order at 22; Claimant's Exhibit 4.

I draw the rational inference that Dr. Rosenberg, Dr. Castle, and Dr. Oesterling implicitly concluded that [the miner] had a totally disabling respiratory impairment at the time of his death. Dr. Rosenberg and Dr. Castle felt that this disabling respiratory impairment was due to esophageal cancer that had spread to both lungs, while Dr. Oesterling felt that [the miner's] disabling respiratory impairment was caused by a combination of his moderately severe emphysema and cancer. Dr. Perper also concluded that, before his death, [the miner] was totally and permanently disabled by a combination of his cancer, with significant contributions by his COPD/emphysema. I find that their opinions are sufficient to support a finding that before his death, [the miner] suffered from a totally disabling respiratory impairment.

Decision and Order at 23. Therefore, the administrative law judge found that the medical opinion evidence was sufficient to establish that the miner had a totally disabling respiratory impairment at the time of his death. *Id.* Accordingly, the administrative law judge found that claimant was entitled to the Section 411(c)(4) presumption of total disability due to pneumoconiosis. *Id.*

Employer asserts that the administrative law judge improperly relied on her own interpretation of the medical data to infer that Drs. Castle and Rosenberg rendered implicit diagnoses of a totally disabling respiratory impairment. Employer further maintains:

Neither Dr. Rosenberg nor Dr. Castle found that the [miner] was totally disabled from a respiratory standpoint. Obviously either doctor would agree that the [miner] was disabled generally as a result of his end stage cancer which had metastasized throughout his upper torso; however, that finding is not the same as a finding of total respiratory disability. Both Dr. Rosenberg and Dr. Castle testified that there was no evidence that the [miner's] lung function was impaired in any way. Although it is certainly within the realm of possibility that once the cancer metastasized to the [miner's] lungs it may have caused him some breathing impairment, there is no evidence in the record which would support that conclusion, and certainly no evidence to establish that such impairment was totally disabling.

Employer's Brief in Support of Petition for Review at 15.

Contrary to employer's contention, the administrative law judge rationally determined, based upon statements made at their depositions, that Drs. Castle and Rosenberg opined that the miner suffered from a total respiratory disability due to the

metastasis of his esophageal cancer to his lungs. The administrative law judge accurately noted that Dr. Castle testified at his deposition that the miner “was clearly disabled because of metastatic esophageal cancer to the lungs.” Employer’s Exhibit 9 at 22. Dr. Castle also stated that “clearly what he did have was significant disability and ultimately death related to the metastatic esophageal cancer.” *Id.* At Dr. Rosenberg’s deposition, he was asked whether the additional materials he reviewed changed his opinion as to whether the miner was disabled from a pulmonary perspective during his life. Employer’s Exhibit 10 at 9. Dr. Rosenberg responded:

Well, obviously toward the end of his life he became disabled. I mean he likely had thromboembolic disease. He presented with deep vein thrombosis during the last year of his life, and he goes on to develop metastatic cancer throughout his lungs and various changes that were related to that. So toward the end of his life he clearly became disabled.

*Id.* Dr. Rosenberg also indicated that the miner had blood clots in his lungs. *Id.* at 17. Based on their deposition testimony, we hold that the administrative law judge’s conclusion, that the opinions of Drs. Castle and Rosenberg support a finding that the miner had a totally disabling respiratory or pulmonary impairment, was within her discretion and supported by substantial evidence.<sup>9</sup> See *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316-17, 25 BLR 2-115, 2-133 (4th Cir. 2012); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998).

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<sup>9</sup> Employer does not challenge the administrative law judge’s weighing of Dr. Oesterling’s opinion under 20 C.F.R. §718.204(b)(2), but, in setting forth its arguments regarding the administrative law judge’s findings on rebuttal, employer alleges that “there is no support” for the administrative law judge’s “suggestion” that “Dr. Oesterling’s consideration of clinical data included as part of the autopsy packet converted the doctor’s detailed pathology analysis to a medical opinion which exceeded the evidentiary limitations.” Employer’s Brief in Support of Petition for Review at 21. Contrary to employer’s assertion, the Board held in *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-241-42 (2007) (en banc), that an autopsy report in which a physician renders an opinion that is based on his or her review of evidence beyond the scope of the autopsy materials constitutes an autopsy report *and* a medical report, both of which are admissible, provided they do not exceed the evidentiary limitations. Accordingly, we affirm the administrative law judge’s finding that Dr. Oesterling’s opinion constituted both an autopsy and medical report, and her permissible determination that the medical report portion of his opinion exceeded the evidentiary limitations, as employer designated the opinions of Drs. Castle and Rosenberg as its two medical reports. 20 C.F.R. §725.414(a)(3)(i); see *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 620, 23 BLR 2-345, 2-358 (4th Cir. 2006); *Keener*, 23 BLR at 1-241-42.

Accordingly, we also affirm the administrative law judge's findings that the medical opinion evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2),<sup>10</sup> and invocation of the Section 411(c)(4) presumption of total disability due to pneumoconiosis.<sup>11</sup> *See Looney*, 678 F.3d at 316-17, 25 BLR at 2-133.

**B. Rebuttal of the Presumption – 20 C.F.R. §718.305(d)(1)**

In order to rebut the Section 411(c)(4) presumption, employer must affirmatively prove that the miner did not have legal pneumoconiosis<sup>12</sup> and clinical pneumoconiosis,<sup>13</sup>

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<sup>10</sup> The administrative law judge's finding that the miner is totally disabled at 20 C.F.R. §718.204(b)(2) supports her determination that claimant established a change in an applicable condition of entitlement under 20 C.F.R. §725.309. 20 C.F.R. §725.309(d); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004).

<sup>11</sup> We reject employer's argument that remand is required on the basis that the administrative law judge initially discredited Dr. Perper's diagnosis of a totally disabling respiratory impairment because it was not well-documented, but then credited this same opinion when setting forth her conclusion at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 22-23. Because we have affirmed the administrative law judge's finding that the preponderance of the credited medical opinion evidence is sufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge's error, if any, does not require remand. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53, 1-55 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-278 (1984).

<sup>12</sup> Legal pneumoconiosis is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). A disease arising out of coal mine employment "includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2),(b).

<sup>13</sup> Clinical pneumoconiosis is defined as:

[T]hose diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis,

or that “no part of the miner’s respiratory or pulmonary total disability was caused by pneumoconiosis as defined in §718.201.” 20 C.F.R. §718.305(d)(1)(i), (ii); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-159 (2015) (Boggs, J., concurring and dissenting). The administrative law judge first determined that employer could not affirmatively establish that the miner did not have clinical pneumoconiosis because the most recent x-ray evidence is in equipoise, and the pathology findings of clinical pneumoconiosis outweigh the negative CT scan reading. Decision and Order at 24. With respect to the causal role played by clinical pneumoconiosis in the miner’s total disability, however, the administrative law judge found, based on the opinions of the pathologists who indicated that the miner’s pneumoconiosis was too mild to have created any functional impairment, that employer “has ruled out clinical pneumoconiosis as a factor in [the miner’s] disabling impairment.” *Id.* at 25.

Accordingly, the administrative law judge was left to address the two methods of rebuttal available to employer pertaining to the presumed existence of legal pneumoconiosis and the presumed causal link between legal pneumoconiosis and the miner’s total respiratory disability. 20 C.F.R. §718.305(d)(1)(i)(A), (ii). These are the findings that employer challenges on appeal.

To rebut the existence of legal pneumoconiosis, employer was required to affirmatively establish, by a preponderance of the evidence, that the miner did not have a chronic lung disease or impairment “significantly related to, or substantially aggravated by, dust exposure in coal mine employment.” 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich*, 25 BLR at 1-159. The administrative law judge, however, applied the wrong standard by requiring employer’s experts to “rule out” any contribution by coal dust exposure to the miner’s emphysema. Decision and Order at 25-26. Specifically, after reviewing the relevant medical opinions, the administrative law judge determined that employer did not rebut the existence of legal pneumoconiosis because it “has not *ruled out* [the miner’s] twenty year history of coal mine dust exposure as a factor in his emphysema.” *Id.* at 26 (emphasis added).

This error is particularly evident in her consideration of Dr. Rosenberg’s opinion. Dr. Rosenberg testified at his deposition that the miner had “some emphysema” and, although he could not “rule out” a contribution from coal dust as a cause of the disease, he believed that the emphysema was primarily attributable to the miner’s cigarette

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massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

smoking. Employer's Exhibit 10 at 15-16. Rather than assessing whether Dr. Rosenberg's opinion established that the miner's emphysema was not "significantly related to, or substantially aggravated by," coal dust exposure, the administrative law judge found that his opinion was facially insufficient to meet the higher standard of "rul[ing] out [the miner's] lengthy coal mine dust exposure history as a factor in his emphysema", and she discredited his opinion for this reason alone. Decision and Order at 25. The rationales the administrative law judge provided for discrediting the opinions of Drs. Castle, Oesterling, and Caffrey were similarly linked to the same flawed rebuttal standard, to varying degrees.<sup>14</sup>

On the basis of the administrative law judge's failure to apply the correct standard to the issue of whether employer rebutted the presumed existence of legal pneumoconiosis, we must vacate her findings relevant to 20 C.F.R. §718.305(d)(1)(i)(A) and remand this case for reconsideration of that issue. *See Bender*, 782 F.3d at 137; *Minich*, 25 BLR at 1-159.

On remand, the administrative law judge must initially determine whether employer has rebutted the presumed existence of legal pneumoconiosis by affirmatively establishing, by a preponderance of the evidence, that the miner did not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich*, 25 BLR at 1-159. If the administrative law judge determines that employer has not rebutted the existence of legal pneumoconiosis, she must then consider whether employer has affirmatively established that no part of the miner's pulmonary or respiratory disability was caused by legal pneumoconiosis. *See* 20

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<sup>14</sup> The administrative law judge stated: "Dr. Castle's reliance on the 'typical' findings does not *rule out* [the miner's] coal mine dust exposure as a factor in his pulmonary emphysema;" Dr. Oesterling did not explain "how he was able to *totally exclude* [the miner's] extensive history of coal dust exposure as a factor" in the miner's emphysema;" and Dr. Caffrey "cit[ed] to recent studies showing that in a susceptible person coal dust can cause emphysema, but cigarette smoke is by far the most important contributor to the development of [chronic obstructive pulmonary disease]. Clearly this does not *rule out* coal mine dust exposure as a factor" in the miner's emphysema. Decision and Order at 25 (emphasis added). Although an administrative law judge may permissibly discredit a physician for being unreasoned or undocumented with respect to the physician's own conclusion that coal dust exposure could be excluded as a contributor to the miner's respiratory disease, in this case the administrative law judge did not render separate credibility findings that could be distinguished from her application of the incorrect rebuttal standard. Thus, we cannot hold that the administrative law judge's error was harmless.

C.F.R. §718.305(d)(1)(i)(A), (ii); *Bender*, 782 F.3d at 137; *Minich*, 25 BLR at 1-159 (“the administrative law judge must determine whether employer is able to rebut the presumed fact of disability causation at [20 C.F.R. §] 718.305(d)(1)(ii) with credible proof that no part, not even an insignificant part, of claimant’s pulmonary or respiratory disability was caused by either legal or clinical pneumoconiosis”).<sup>15</sup> Further, the administrative law judge must be mindful of her finding that the medical report portion of Dr. Oesterling’s opinion exceeded the evidentiary limitations at 20 C.F.R. §725.414(a)(3)(i). In setting forth her findings on remand, the administrative law judge must comply with the Administrative Procedure Act.<sup>16</sup> *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-161, 1-165 (1989).

## II. The Survivor’s Claim

In the survivor’s claim, the administrative law judge relied on her findings in the miner’s claim to determine that claimant invoked the presumption that the miner’s death is due to pneumoconiosis and that employer did not rebut it, and she awarded benefits accordingly. Decision and Order at 27-28. We affirm her determination that claimant is entitled to the presumption in the survivor’s claim, based on our affirmance of the administrative law judge’s findings that the miner had more than fifteen years of qualifying coal mine employment and suffered from a totally disabling respiratory impairment. *See Bender*, 782 F.3d at 137; *Minich*, 25 BLR at 1-159. However, because the administrative law judge’s determination that employer did not rebut the Section 411(c)(4) presumption of death due to pneumoconiosis in the survivor’s claim was based on her findings in the miner’s claim, which we have vacated, we must also vacate this finding, and the award of survivor’s benefits.

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<sup>15</sup> Employer must affirmatively disprove the existence of legal pneumoconiosis, or establish that no part of the miner’s total disability was caused by legal pneumoconiosis, regardless of the administrative law judge’s finding that employer affirmatively ruled out any connection between the miner’s clinical pneumoconiosis and his disability. *See* 20 C.F.R. §718.305(d)(1)(i),(ii)(requiring the moving party to disprove the existence of clinical and legal pneumoconiosis, or establish that no part of the miner’s disability was caused by either clinical or legal pneumoconiosis).

<sup>16</sup> The Administrative Procedure Act, 5 U.S.C. §500 *et seq.*, as incorporated into the Act by 30 U.S.C. §932(a), provides that every adjudicatory decision must 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).

On remand, if the administrative law judge again awards benefits in the miner's claim, she should reinstate the award of survivor's benefits. Pursuant to 30 U.S.C. §932(l) of the Act,<sup>17</sup> claimant is automatically entitled to survivor's benefits if she establishes that: she filed her claim after January 1, 2005; her claim was pending on or after March 23, 2010; she is an eligible survivor of the miner; and the miner had been determined to be eligible to receive benefits at the time of his death. 30 U.S.C. §932(l). We note that the record in the survivor's claim establishes that the first and second criteria are met. SC (Survivor's Claim) Director's Exhibit 1. Claimant's status as an eligible survivor was not a contested issue, thereby establishing the third criterion. Therefore, if benefits are awarded in the miner's claim, the fourth criterion would be met and claimant would have demonstrated her automatic entitlement to benefits under Section 932(l). 30 U.S.C. §932(l); *Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013). However, if the administrative law judge denies benefits in the miner's claim on remand, she must reconsider her finding that employer failed to rebut the Section 411(c)(4) presumption of death due to pneumoconiosis in the survivor's claim, in light of her reconsideration of the medical opinion evidence under the proper rebuttal standard. If the administrative law judge finds that employer has rebutted the presumption of death due to pneumoconiosis, she must consider the merits of entitlement, with the burden of proof on claimant.

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<sup>17</sup> With respect to survivors' claims, the amendments revived the "derivative entitlement" provision of Section 422(l) of the Act, 30 U.S.C. §932(l), for claims filed after January 1, 2005, that are pending on or after March 23, 2010. Under Section 932(l), a survivor of a miner who was eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits without having to establish, by any means, that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l); *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193 (2010).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits in Living Miner's Claim and Survivor's Claim is affirmed in part, and vacated in part, and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge