U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB Nos. 24-0482 BLA
and 25-0107 BLA

LOIS J. WHITED (o/b/o and Widow of BAILEY E. WHITED) Claimant-Respondent v. ISLAND CREEK KENTUCKY MINING Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 08/06/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Dierdra M. Howard, Administrative Law Judge, United States Department of Labor.

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

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE, Administrative Appeals Judge, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Dierdra M. Howard's Decision and Order Awarding Benefits (2022-BLA-05856 & 2023-BLA-05289) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's subsequent claim[1] filed on March 31, 2021, and a survivor's claim filed on September 28, 2022.[2]

The ALJ accepted the parties' stipulation that the Miner had 16.25 years of underground coal mine employment and found Claimant[3] established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018), and established a change in an applicable condition of entitlement.[4] 20 C.F.R. §725.309(c). She further found Employer did not rebut the presumption and awarded benefits. Based on the award of benefits in the

[1] This is the Miner's fourth claim for benefits. Decision and Order at 2. On November 27, 2017, the district director denied the Miner's most recent prior claim, filed on April 3, 2017, because he failed to establish any element of entitlement. 2017 Claim Director's Exhibit 40 at 3.

[2] The Benefits Review Board has consolidated the appeal in the miner's claim, BRB No. 24-0482 BLA, and in the survivor's claim, BRB No. 25-0107 BLA, for purposes of decision only.

[3] Claimant is the widow of the Miner, who died on July 31, 2022, while his claim was pending before the district director. Miner's Claim (MC) Director's Exhibit 55; Survivor's Claim (SC) Exhibit 6. She is pursuing the miner's claim on her husband's behalf and her own survivor's claim. SC Director's Exhibits 2; 8.

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the Miner did not establish any element of entitlement in his prior claim, Claimant had to submit new evidence establishing any element to obtain review of the merits of the Miner's current claim. *See White*, 23 BLR at 1-3.

miner's claim, the ALJ found Claimant derivatively entitled to survivor's benefits pursuant to Section 422(*l*) of the Act,[5] 30 U.S.C. §932(*l*) (2018).

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and invoked the Section 411(c)(4) presumption and in finding it did not rebut the presumption.[6] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[7] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Invocation of the Section 411(c)(4) Presumption - Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful employment.[8] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies and arterial blood

[5] Section 422(*l*) of the Act provides that the survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits, without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[6] We affirm, as unchallenged on appeal, the ALJ's finding that the Miner had 16.25 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3, 15.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); SC Hearing Tr. at 25.

[8] The ALJ found the Miner's usual coal mine employment was working as a working boss or foreman which required heavy labor. Decision and Order at 20; *see* Hearing Tr. at 16-20, 22. As this finding is unchallenged, we affirm it. *See Skrack*, 6 BLR at 1-711.

gas studies,[9] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The ALJ found Claimant established total disability based on the pulmonary function studies, medical opinions, and the evidence considered as a whole.[10] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 16-20.

Pulmonary Function Studies

The ALJ considered three pulmonary function studies dated June 19, 2017, July 23, 2021, and November 8, 2021. Decision and Order at 6, 16-17. The June 19, 2017 study produced non-qualifying pre-bronchodilator values and did not include post-bronchodilator testing. 2017 Director's Exhibit 31. The July 23, 2021 study produced qualifying pre-bronchodilator values and did not include post-bronchodilator testing. MC Director's Exhibit 20 at 12. The November 8, 2021 study produced non-qualifying pre-bronchodilator values and qualifying post-bronchodilator values. MC Director's Exhibit 25 at 14.

The ALJ found the July 23, 2021 study valid and the November 8, 2021 study invalid. Decision and Order at 17. She then assigned greater weight to the July 23, 2021 study than the June 19, 2017 study based on its recency and credited the qualifying July 23, 2021 pre-bronchodilator results over the non-qualifying post-bronchodilator results. *Id.* at 17, 20. Thus, she found the pulmonary function study evidence is qualifying and supports a finding of total disability. *Id.*

Initially, we reject Employer's argument that the ALJ erred by failing to consider the June 19, 2017 pulmonary function study conducted as part of the Miner's prior claim. Employer's Brief at 4-5. The ALJ considered the prior claim evidence but permissibly

[9] A "qualifying" pulmonary function study or arterial blood gas study yields results that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[10] The ALJ found Claimant did not establish total disability based on arterial blood gas studies or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 17-18.

found the more recent evidence a more accurate reflection of the Miner's condition prior to his death. *See Mullins Coal Co. of Va. v. Director, OWCP* [*Stapleton*], 484 U.S. 135, 151 (1987); *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 718 (4th Cir. 1993); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992); *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-34-35 (2004) (en banc) (more recent medical evidence may be accorded greater probative value than that submitted with a prior claim where the more recent evidence shows the miner's condition has worsened because of the progressive nature of pneumoconiosis); Decision and Order at 16-17, 20.

Employer further contends the ALJ erred in finding the November 8, 2021 pulmonary function study is invalid. Employer's Brief at 5-6. We disagree.

Dr. Sargent stated "[p]ulmonary function testing was attempted, but the patient could not generate valid results." MC Director's Exhibit 25 at 2. He opined the flow volume loops indicated the Miner was unable to produce reproducible results and concluded the study is invalid. *Id.* at 13. Additionally, the technician noted the Miner was unable to produce acceptable and reproducible spirometry results. *Id.* at 14. Thus, as it is supported by substantial evidence, we discern no error in the ALJ's finding the study is invalid based on Dr. Sargent's opinion and the technician's notes. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985); Decision and Order at 17.

As Employer raises no additional arguments regarding the ALJ's weighing of the pulmonary function study evidence, we affirm her crediting of the qualifying July 23, 2021 pre-bronchodilator study and her finding the pulmonary function study evidence supports a finding of total disability.[11] 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 20.

Medical Opinions

The ALJ then considered the medical opinions of Drs. Raj, Green, Sargent, and Fino. Decision and Order at 7-10, 18-19. Drs. Raj and Green opined the Miner was totally disabled based on the abnormal pulmonary function and arterial blood gas study results and the exertional requirements of his usual coal mine work. MC Director's Exhibit 20 at

[11] We reject Employer's argument that the ALJ failed to provide adequate reasoning for crediting Dr. Gaziano's validation of the July 23, 2021 pulmonary function study. Employer's Brief at 6-7. The ALJ did not credit Dr. Gaziano's validation of the study over contrary evidence, but rather merely noted that, in contrast to the invalid November 8, 2021 study, there was no challenge to the validity of the July 23, 2021 study and that Dr. Gaziano opined it is valid. Decision and Order at 17.

3-5; MC Claimant's Exhibit 3 at 5-6, 9-10. Dr. Sargent opined the Miner was disabled due to his "severe morbid obesity" which caused "worsening respiratory function and arterial blood gas abnormalities." MC Director's Exhibit 25 at 3. Similarly, Dr. Fino opined the Miner had a respiratory impairment but was not totally disabled because his most recent pulmonary function and arterial blood gas studies were not qualifying. MC Employer's Exhibit 2 at 5-6. The ALJ found the opinions of Drs. Raj and Green reasoned and documented[12] and the opinions of Drs. Sargent and Fino not reasoned and entitled to little weight. Decision and Order at 18-19. Weighing the evidence together, she found the medical opinions support a finding of total disability. *Id.* at 19.

Employer's general argument that the ALJ should have given the opinions of Drs. Sargent and Fino greater weight than Dr. Raj's opinion because they reviewed more evidence and "fully explained" their opinions is a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 8-10. The ALJ rationally found the opinions of Drs. Sargent and Fino unpersuasive because they relied on invalid objective testing and addressed the cause of the Miner's respiratory impairment rather than explaining why he would still be able to perform his usual coal mine employment. 20 C.F.R. §§718.103(c), 718.204(a) ("If . . . a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis."); 20 C.F.R. Part 718, App. B; *see Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 18-19.

Employer argues the ALJ erred in crediting Dr. Raj's opinion over those of Drs. Sargent and Fino because they reviewed more medical records.[13] Employer's Brief at 8. We disagree.

[12] Employer does not challenge the ALJ's crediting of Dr. Green's opinion that the Miner was totally disabled; thus, we affirm this determination. *See Skrack*, 6 BLR at 1-711; Decision and Order at 19.

[13] Employer also asserts the ALJ erred in crediting Dr. Raj because he "failed to explain why the [M]iner continued to be considered totally disabled from a pulmonary standpoint given the later improved testing," and that this created an "inconsistency between his opinion and the diagnostic evidence." Employer's Brief at 6-8. We need not address Employer's argument because the later testing is invalid. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could

Dr. Raj opined the July 23, 2021 pulmonary function study revealed a moderate restrictive defect, and the blood gas testing from the same day demonstrated hypoxemia and hypercapnia. MC Director's Exhibit 20 at 5. Further, he stated the Miner had wheezing and shortness of breath walking about fifty feet on level ground. *Id.* He concluded the Miner was totally disabled due to his respiratory impairment from performing his usual coal mine employment that required crawling and lifting up to 100 pounds. *Id.* at 3, 5.

Contrary to Employer's assertion, an ALJ may credit a physician who did not review all of a miner's medical records when that doctor's opinion is otherwise reasoned, documented, and based on an examination of the miner and objective test results. 20 C.F.R. §718.204(b)(2)(iv); *see Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Church v. E. Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996). Given Dr. Raj's consideration of the Miner's occupational history, symptoms, physical examination, and objective testing, the ALJ permissibly found his opinion reasoned and documented. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 18.

Because it is supported by substantial evidence, we affirm the ALJ's finding Claimant established total disability based on the medical opinions at 20 C.F.R. §718.204(b)(2)(iv), and in consideration of the evidence as a whole.[14] *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; 20 C.F.R. §718.204(b); Decision and Order at 19-20. Consequently, we affirm the ALJ's finding Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. 20 C.F.R. §§718.305(b), 725.309(c); Decision and Order at 20-21.

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[15] or that "no part of [his] respiratory or pulmonary total

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have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); 20 C.F.R. §718.204(a).

[14] We reject Employer's argument the ALJ "must address the fact that, while the November 8, 2021 [pulmonary function study] was non-conforming, the miner was able to achieve non-qualifying results," as Employer does not identify any evidence the ALJ failed to consider. Employer's Brief at 6.

[15] "Legal pneumoconiosis" includes "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The

disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer did not establish rebuttal by either method.[16]

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish 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 v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered Drs. Sargent's and Fino's opinions that the Miner did not have legal pneumoconiosis because his respiratory impairment was caused by his severe morbid obesity and unrelated to his coal mine dust exposure.[17] Decision and Order at 23-27; MC Director's Exhibit 25 at 3; MC Employer's Exhibits 1; 2 at 6; 3 at 5; 9 at 2; 10. She found their opinions inadequately explained and/or premised on assumptions contrary to the regulations, and thus insufficient to disprove legal pneumoconiosis. Decision and Order at 27. Thus, she found Employer failed to disprove legal pneumoconiosis. *Id.* at 28.

Initially, we reject Employer's argument that the ALJ applied an incorrect legal standard by requiring Drs. Sargent and Fino to "rule out" legal pneumoconiosis. Employer's Brief at 14, 19-20. The ALJ correctly stated Employer has the burden to establish the Miner did not have a chronic lung disease or impairment significantly related to, or substantially aggravated by, coal mine dust exposure. *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i); *see also W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d

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definition 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(b). "Clinical pneumoconiosis" consists of "those 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." 20 C.F.R. §718.201(a)(1).

[16] The ALJ found Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 27.

[17] The ALJ also considered Drs. Raj's and Green's opinions that the Miner had legal pneumoconiosis, which do not aid Employer in rebutting the presumption. Decision and Order at 23, 25-26.

691, 695 (4th Cir. 2018); Decision and Order at 21. Moreover, she did not discredit the opinions of Drs. Sargent and Fino because they failed to satisfy an erroneous heightened legal standard, but rather because they did not persuasively explain their opinions excluding coal mine dust as a cause or contributor to the Miner's respiratory impairment. *See Energy W. Mining Co. v. Estate of Blackburn,* 857 F.3d 817, 832-33 (10th Cir. 2017) (rejecting argument that ALJ improperly applied a rule out standard where he found medical opinions excluding legal pneumoconiosis not credible); Decision and Order at 23-27.

Employer argues the ALJ erred in discrediting Drs. Sargent's and Fino's opinions. Employer's Brief at 12-19. We disagree.

Dr. Sargent opined the Miner had sufficient coal mining employment to put him at risk of pneumoconiosis but both Drs. Sargent and Fino excluded coal mine dust exposure as a cause of the Miner's respiratory impairment, in part, because in 2017, "[thirty] years after he ceased mining employment," he had nearly normal lung function testing. MC Director's Exhibit 25 at 3; MC Employer's Exhibits 1; 2 at 6; 9. They explained the Miner's obesity was the sole cause of his respiratory impairment because the degree of impairment on his blood gas study results fluctuated consistent with the changes in the severity of his obesity. MC Director's Exhibit 25 at 3; MC Employer's Exhibits 1; 2 at 5-6; 9; 10. Dr. Sargent further stated the restrictive impairment did not constitute pneumoconiosis because "[w]hen restrictive lung disease is caused by pneumoconiosis, it is nearly always associated with interstitial changes on chest x-ray," and the Miner's x-rays were negative for clinical pneumoconiosis. MC Employer's Exhibit 1.

Contrary to Employer's argument, the ALJ permissibly discredited the opinions of Drs. Sargent and Fino because they did not adequately address why the Miner's coal mine dust exposure did not substantially contribute to, or aggravate, his respiratory impairment in addition to his obesity. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); Decision and Order at 24-25, 27. Further, she permissibly discredited their rationale because the regulations provide that pneumoconiosis is "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Stapleton*, 484 U.S. at 151; *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); Decision and Order at 24.

Moreover, the ALJ permissibly rejected Dr. Sargent's opinion that a restrictive impairment must be associated with radiographic evidence of pneumoconiosis as inconsistent with the regulations that define legal pneumoconiosis as "any chronic

restrictive or obstructive pulmonary disease," and recognize pneumoconiosis may exist in the absence of positive x-ray evidence. 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012) (the regulations "separate clinical and legal pneumoconiosis into two different diagnoses" and "provide that [n]o claim for benefits shall be denied solely on the basis of a negative chest [x]-ray") (internal quotations omitted); Decision and Order at 24.

Employer's remaining arguments that Drs. Sargent and Fino provided credible explanations, and thus their opinions rebut the presumption, amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113; Employer's Brief at 12-19. Because the ALJ permissibly discredited the only opinions supportive of Employer's burden on rebuttal, we affirm her finding Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 27-28. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "no part of the [M]iner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(ii). The ALJ rationally discredited the disability causation opinions of Drs. Sargent and Fino because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the existence of the disease. *See Epling*, 783 F.3d at 504-05; *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (where physician failed to properly diagnose pneumoconiosis, an ALJ "may not credit" that physician's opinion on causation absent "specific and persuasive reasons," in which case the opinion is entitled to at most "little weight"); Decision and Order at 28. We therefore affirm the ALJ's finding that Employer failed to establish no part of the Miner's respiratory disability was caused by legal pneumoconiosis, 20 C.F.R. §718.305(d)(1)(ii), and therefore the ALJ's award of benefits in the miner's claim.

Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to the award in the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits because the Miner was entitled to benefits at the time of his death. 30 U.S.C. §932(*l*) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); Decision and Order at 29.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge