



BRB Nos. 25-0199 BLA  
and 25-0227 BLA

LINDA G. COLEMAN )  
(o/b/o and Widow of MIKEAL COLEMAN) )

Claimant-Respondent )

v. )

WESTBURY COAL MINING )  
PARTNERSHIP )

and )

OLD REPUBLIC INSURANCE COMPANY )

Employer/Carrier-Petitioners )

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )

Party-in-Interest )

**NOT-PUBLISHED**

DATE ISSUED: 08/28/2026

**DECISION and ORDER**

Appeal of the Decision and Order Awarding Benefits on Remand and Decision and Order Awarding Survivor's Benefits Under the Automatic Entitlement Provisions of the Black Lung Benefits Act of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Michael A. Pusateri and W. William Prochot (Greenberg Traurig, LLP), Washington D.C., for Employer and its Carrier.

Stephen Shannon (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; Olgamaris Fernandez, Acting Deputy Associate Solicitor; William M. Bush, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits on Remand (2020-BLA-05826) and Decision and Order Awarding Survivor's Benefits Under the Automatic Entitlement Provisions of the Black Lung Benefits Act (2024-BLA-05871), rendered on claims filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case involves a miner's subsequent claim filed on April 24, 2019,<sup>1</sup> that is

---

<sup>1</sup> The Miner's prior claim, filed on September 24, 2015, was denied as abandoned. Miner's Claim (MC) Director's Exhibit 1. A denial by reason of abandonment is "deemed a finding that the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409(c). The Miner subsequently requested modification of his prior claim, which was also denied on July 18, 2017, for failure to establish a mistake in a determination of fact. MC Director's Exhibit 1. When a miner files a claim for benefits more than one year after the denial of a prior 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); *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 applicable condition of entitlement in his prior claim, he had to submit evidence establishing at least one element of entitlement to obtain review of the merits of his current claim. *Id.*

before the Benefits Review Board for a second time<sup>2</sup> and a survivor's claim filed on June 25, 2024.<sup>3</sup>

In her initial 2022 Decision and Order Awarding Benefits in the miner's claim, the ALJ found Employer is the properly designated responsible operator. She then determined Claimant<sup>4</sup> established fifteen years of underground coal mine employment and 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,<sup>5</sup> 30 U.S.C. §921(c)(4), and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309. Further, she found Employer did not rebut the presumption and awarded benefits.

In consideration of Employer's prior appeal, the Board affirmed Employer's designation as the responsible operator and affirmed, as unchallenged, the ALJ's findings that Claimant established a totally disabling respiratory or pulmonary impairment and therefore a change in an applicable condition of entitlement. *Coleman v. Westbury Coal Mining P'ship*, BRB No. 23-0145 BLA, slip op. at 3 n.3, 4 (July 17, 2024) (unpub.). But the Board vacated her finding that Claimant established fifteen years of qualifying coal mine employment because the ALJ did not adequately explain her findings in accordance with the Administrative Procedure Act (APA).<sup>6</sup> *Id.* at 7-8. Consequently, the Board also

---

<sup>2</sup> We incorporate the procedural history of this case as set forth in *Coleman v. Westbury Coal Mining Partnership*, BRB No. 23-0145 BLA (July 17, 2024) (unpub.).

<sup>3</sup> The Board consolidated Employer's appeal in the miner's claim, BRB No. 25-0199 BLA, and in the survivor's claim, BRB No. 25-0227 BLA, for purposes of decision only. *Coleman v. Westbury Coal Mining P'ship*, BRB Nos. 25-0199 BLA and 25-0227 BLA (May 15, 2025) (Order) (unpub.).

<sup>4</sup> Claimant is the widow of the Miner, who died on May 19, 2024, while his claim was previously pending before the Board. Survivor's Claim (SC) Decision and Order at 2; SC Director's Exhibit 5. She is pursuing the miner's claim on behalf of her husband's estate and her own survivor's claim.

<sup>5</sup> Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability or death was due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

<sup>6</sup> The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include "findings and conclusions, and the reasons or basis therefor,

vacated the ALJ's determination that Claimant invoked the Section 411(c)(4) presumption and the award of benefits and remanded the case for reconsideration. *Id.*

On remand, the ALJ found Claimant established fifteen years and ten months of coal mine employment. Consequently, she again determined Claimant invoked the Section 411(c)(4) presumption and reinstated her findings that Employer did not rebut the presumption and the award of benefits.

In a separate Decision and Order in the survivor's claim, the ALJ found, based on the award of benefits in the miner's claim, Claimant automatically entitled to survivor's benefits under Section 422(l) of the Act.<sup>7</sup> 30 U.S.C. §932(l).

On appeal in the miner's claim, Employer argues the ALJ again erred in calculating the length of the Miner's coal mine employment and contends that the Miner has only 6.72 years of coal mine employment, insufficient to invoke the Section 411(c)(4) presumption or the ten-year presumption that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. § 718.203(b). Thus, it requests the Board vacate the award of benefits in the miner's claim and remand this case to a new ALJ to determine if Claimant established every element of entitlement without the assistance of any presumptions. Claimant responds in support of the award of benefits. Employer replied, reiterating its contentions. The Director, Office of Workers' Compensation Programs (the Director), declined to file a substantive response in the miner's claim.

On appeal in the survivor's claim, Employer requests en banc review of the ALJ's decision to award automatic survivor's benefits on the grounds that it is premature because the award of benefits in the miner's claim is not final. Specifically, it asserts the Board should overrule its decision in *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141 (2014), holding an award of benefits in a miner's claim does not have to be final or effective for a claimant to receive survivor's benefits under Section 422(l), and cases decided based on its reasoning. Claimant responds in support of the award of survivor's benefits. The Director also responds, urging the Board to reject Employer's arguments because the

---

on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

<sup>7</sup> Section 422(l) of the Act provides 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).

regulations implementing Section 422(l) are consistent with the Board's reasoning in *Rothwell*. Employer replied to Claimant and the Director, reiterating its arguments.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decisions and Orders if they are rational, supported by substantial evidence, and in accordance with applicable law.<sup>8</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

### **Miner's Claim**

#### **Invocation of the Section 411(c)(4) Presumption – Length of Coal Mine Employment**

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner worked at least fifteen years in underground coal mines, or in “substantially similar” surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years the Miner worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The dates and length of employment may be established by any credible evidence, and the Board will uphold an ALJ's determination based on a reasonable method of calculation that is supported by substantial evidence and in accordance with applicable law. 20 C.F.R. §725.101(a)(32)(ii); *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986). The United States Court of Appeals for the Fourth Circuit has recently held that a miner need only show he or she “worked 125 working days within a calendar year (or partial periods totaling one year) to establish a year of employment.” *Baldwin v. Director, OWCP*, 170 F.4th 273, 282 (4th Cir. 2026).

The ALJ considered the Miner's hearing testimony, application for benefits, Social Security Earnings Statement (SSES), and notations in the medical reports regarding the length of his coal mine employment. MC Decision and Order on Remand at 2-3; MC Hearing Transcript; MC Director's Exhibits 3-7, 14, 20; MC Claimant's Exhibit 2; MC Employer's Exhibit 6. She indicated the record did not establish the exact beginning and ending dates of any period of the Miner's coal mine employment but that the Miner consistently reported more than fifteen years of coal mine employment. MC Decision and Order on Remand at 2. In addition, she found the Miner provided details about the type of

---

<sup>8</sup> 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); Hearing Transcript at 28-29; Director's Exhibits 4, 6, 7.

coal mine work he performed, indicated the names of many of his employers, and provided uncontradicted testimony that he was paid over a significant period of time in cash “rendering his [SSES] unreliable as the sole source of evidence on this issue.” *Id.*

The ALJ divided the Miner’s work record into three separate segments or periods, “as the type of evidence and the Regulations differ about how to calculate employment during these time periods.” MC Decision and Order on Remand at 8. Specifically, the ALJ found Claimant established two years and ten months of coal mine employment from 1965 to the third quarter of 1968, eight years of coal mine employment from the fourth quarter of 1968<sup>9</sup> to the first quarter of 1977, and five years of coal mine employment from 1978 to 1983. *Id.* at 8- 9. Thus, she determined Claimant established fifteen years and ten months of coal mine employment. *Id.* at 9.

Employer argues the ALJ did not adequately explain her calculations in violation of the APA and relieved Claimant of her burden of proof. MC Employer’s Brief at 10-17; MC Employer’s Reply Brief at 1-5. Specifically, Employer asserts the ALJ erred in finding that the Miner began working in coal mine employment on his seventeenth birthday, as it states there is no evidence to support this start date in the record. MC Employer’s Brief at 10-12; MC Employer’s Reply Brief at 2-3. It also contends the ALJ erred in not subtracting time for the Miner’s non-coal mine employment construction jobs given his statement that he worked for three or four years in those jobs. MC Employer’s Brief at 12-13; MC Employer’s Reply Brief at 1-2. Further, Employer argues the ALJ erred in finding the Miner’s testimony regarding his employment history credible<sup>10</sup> and in “moving” some of the Miner’s cash coal mine work that he testified occurred earlier in his career to the end

---

<sup>9</sup> The ALJ noted the Miner’s SSES shows coal mine employment earnings for the first time in the fourth quarter of 1968. MC Decision and Order on Remand at 8; MC Director’s Exhibit 6.

<sup>10</sup> In asserting that the ALJ’s credibility determination concerning the Miner’s testimony regarding his employment history is unexplained and contradictory, Employer contends she “overlooked” obvious inconsistencies in his testimony concerning his overall length of coal mine employment and the end date of his coal mine employment. MC Employer’s Brief at 13-15. Contrary to Employer’s assertion, the ALJ acknowledged these inconsistencies and permissibly found that where other evidence contradicts the Miner’s testimony (specifically citing the end date of his coal mine employment), she gave the other evidence probative weight; however, where the Miner’s testimony is uncontradicted, she found his testimony probative and credible. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316-17 (4th Cir. 2012); MC Decision and Order on Remand at 2-5.

of his coal mining career to give him maximum credit for those years. MC Employer's Brief at 13-16; MC Employer's Reply Brief at 3-5. Relying on the Miner's SSES and a 251-day work year in accordance with former Fourth Circuit precedent, Employer contends the evidence establishes only 6.72 years of coal mine employment. MC Employer's Brief at 8-10. Employer's arguments have merit, in part.

### **1965 – 1968 (third quarter)**

For the period from 1965 to the third quarter of 1968, the ALJ acknowledged the Miner's SSES does not report any wages but found the Miner's uncontradicted testimony credible that he began working in the coal mines when he was seventeen years old and that his early coal mine work involved hand loading coal for individual coal mine operators who paid him in cash.<sup>11</sup> MC Decision and Order on Remand at 3-5, 8. Thus, the ALJ found the Miner began working in coal mine employment on November 26, 1965 (his seventeenth birthday) and credited him with coal mine employment through the third quarter of 1968. *Id.* at 8.

Employer contends that the ALJ erred in finding that the Miner offered "uncontradicted testimony that he began working in the coal mines at age 17" given that the Miner testified that he started coal mine work at "about 17, I believe." MC Employer's Brief at 10-11 (quoting MC Decision and Order on Remand at 5, MC Hearing Transcript at 33). It asserts Claimant has not met her burden to establish the Miner's start date because there is no evidence to support that he began working in coal mine employment on his seventeenth birthday and the ALJ relieved Claimant of her burden by finding that there is no evidence "to support" that the Miner did not work full time in coal mine employment during this time period. MC Employer's Brief at 12 (quoting MC Decision and Order on Remand at 9). We are not persuaded.

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316-317 (4th Cir. 2012); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998). The Board will not disturb an ALJ's credibility findings unless they are inherently unreasonable. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc).

While the Miner's testimony was arguably equivocal, his statement that he began his coal mine employment when he was "about seventeen" does not directly contradict the

---

<sup>11</sup> In the ALJ's summary of claim application documents and medical records, she notes that on the CM 913 Description of Coal Mine Work and Other Employment form, the Miner noted that he worked from 1965 to 1985. MC Decision and Order on Remand at 2; MC Director's Exhibit 5.

ALJ's finding he was seventeen when he started. Because it was one of several reasonable conclusions, the ALJ drew permissible inferences in finding a start date of November 26, 1965, and two years and ten months of coal mine employment for this two year and ten-month period. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017) (ALJ evaluates the credibility and weight of the evidence, including witness testimony); MC Decision and Order on Remand at 3-5,8.

And because a miner's credible, uncontradicted testimony may be used to establish the nature and length of his employment, we affirm the ALJ's findings. *See Brandywine Explosives & Supply v. Director, OWCP [Kennard]*, 790 F.3d 657, 664-65 (6th Cir. 2015); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988); *Hutnick v. Director, OWCP*, 7 BLR 1-326, 1-329 (1984); 20 C.F.R. §725.101(a)(32)(ii) ("dates and length of employment may be established by any credible evidence including . . . sworn testimony"); *Looney*, 678 F.3d at 310; *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999) (reviewing court must uphold decisions that rest within the realm of rationality and has no license to "set aside an inference merely because it finds the opposite conclusion more reasonable or because it questions the factual basis."). Employer's arguments amount to 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). As it is supported by substantial evidence, we affirm the ALJ's coal mine employment determination of two years and ten months for the period from 1965 to the third quarter of 1968. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 174 (4th Cir 1997) (describing substantial evidence as more than a scintilla, but only such evidence that a reasonable mind could accept as adequate to support a conclusion, and holding that the findings of an ALJ may not be disregarded on the basis that other inferences could have been drawn from the evidence).

#### **1968 (fourth quarter) – 1977 (first quarter)**

For the period from the fourth quarter of 1968 to the first quarter of 1977, the ALJ credited the Miner with a quarter-year of employment for each quarter in which he earned at least fifty dollars from coal mine operators.<sup>12</sup> MC Decision and Order on Remand at 5-6, 8; *see* MC Director's Exhibit 6. Using this method, she credited him with thirty-two quarters, or at least eight years of coal mine employment, during this period. MC Decision and Order on Remand at 5-6, 8. She considered the Miner's testimony that he worked construction jobs in between his coal mine work and was paid cash "under the table" but

---

<sup>12</sup> The ALJ noted that if the Miner had more than fifty dollars in earnings from two separate employers in a quarter, she counted the quarter only once. MC Decision and Order on Remand at 6 n.2.

found the eight years to be consistent with his testimony “without over- or under-estimating it.” *Id.* at 8; *see* MC Hearing Transcript at 33-43.

Employer argues the ALJ should have instead based her calculations on a 251-day work year and that she failed to subtract the time the Miner worked in construction jobs, like she did in her initial decision. MC Employer’s Brief at 8-9, 12-13; MC Employer’s Reply Brief at 1-2. Contrary to Employer’s assertion, the United States Court of Appeals for the Fourth Circuit and the Board have held it is reasonable to credit a miner for any quarter in which the record shows earnings of at least \$50.00 in coal mine employment. *See Shrader v. Califano*, 608 F.2d 114, 117 n.3 (4th Cir. 1979) (income exceeding fifty dollars is “an appropriate yardstick for determining quarters which will be fully credited to a black lung claimant in determining the duration of his coal mine employment”); *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984).

We also reject Employer’s contention that the ALJ erred in not subtracting the time the Miner worked in construction jobs during this period, as she did previously. In her initial 2022 decision, the ALJ found the Miner had nineteen years of coal mine employment from 1966 to 1985. MC 2022 Decision and Order at 5-6. She then subtracted four years from the total based on the Miner’s testimony that he “might’ve worked three or four years on construction work.” *Id.* at 6 (quoting MC Hearing Transcript at 36). On remand, the ALJ again acknowledged that the Miner worked intermittently for construction companies during his coal mine employment. MC Decision and Order on Remand at 8. She then permissibly determined that her finding of eight years of coal mine employment, based on the Miner’s SSES, during this eight year and six-month period is consistent with the Miner’s testimony that he also intermittently worked in construction jobs and was paid in cash for some coal mine jobs. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *see Stallard*, 876 F.3d at 670; MC Decision and Order on Remand at 8. Thus, we affirm the ALJ’s finding that the Miner had eight years of coal mine employment from the fourth quarter of 1968 to the first quarter of 1977.

### **1978 - 1983**

Finally, the ALJ considered the period from 1978 to 1983<sup>13</sup> where she found the Miner testified he worked in coal mines, was paid in cash wages for a portion of this time,

---

<sup>13</sup> We reject Employer’s argument that the ALJ’s end date for her coal mine employment determination is erroneous because she failed to “recognize[] the wild inconsistency” in the Miner’s testimony concerning his coal mine employment. MC Employer’s Brief at 14-15. On remand, the ALJ acknowledged the inconsistencies concerning the end date of his coal mine employment but permissibly found, based on a review of the evidence as a whole, that Employer was the Miner’s last coal mine employer

and also worked in construction jobs when necessary. MC Decision and Order on Remand at 3-5, 7-9; MC Hearing Transcript at 40-43, 48-52, 54. The ALJ considered the Miner's SSES shows earnings from 1978 to 1983 but noted that while his SSES corroborates his testimony, it is not sufficient alone for calculating the duration of his coal mine employment for this period as it does not account for his cash wages from coal mine employers. MC Decision and Order on Remand at 9. Considering other evidence in the record, the ALJ reviewed the Miner's application for benefits, information he reported to his physicians indicating coal mine employment ranging from 19 to 27.5 years,<sup>14</sup> and the Miner's testimony. *Id.*

Because the Miner's actual dates of employment were not ascertainable, the ALJ divided the Miner's yearly earnings from coal mine employers set forth in his SSES records by the coal mine industry's average daily earnings as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*<sup>15</sup> to determine the number of days the Miner worked. MC Decision and Order on Remand at 7. For years when Claimant worked 125 days or more, she credited him with a full year of coal mine employment. *Id.* For years where he worked less than 125 days, she divided his working days by 125 to credit him with a portion of a year. *Id.* Using this method, she found Claimant worked in coal mine employment for a total of 3.79 years. *Id.* However, the ALJ subsequently stated she determined "using 250 days as a divisor is a reasonable method of computation" because a miner who is employed for a full year will have likely worked 250 days during that year. *Id.* Therefore, the ALJ divided the total number of days she calculated (618.9) by 250 to find 2.49 years of coal mine employment during this time based on the Miner's SSES.<sup>16</sup> *Id.*

---

and that his coal mine employment ended early in 1983 based on his SSES as supported by the Miner's credible testimony. *Stallard*, 876 F.3d at 670; *Looney*, 678 F.3d at 316-17; MC Decision and Order on Remand at 9.

<sup>14</sup> The ALJ acknowledged 27.5 years "overstates the length of coal mine employment as the range of employment dates [the Miner] reports run from no longer than the mid-1960s through the late-1980s." MC Decision and Order on Remand at 3, 9.

<sup>15</sup> Exhibit 610 to the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*, entitled "Average Wage Base," contains the average daily earnings of employees in coal mining and the earnings for those who worked 125 days during a year, and is referenced in 20 C.F.R. §725.101(a)(32)(iii).

<sup>16</sup> In our prior decision, we noted that the Fourth Circuit had not adopted *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 402 (6th Cir. 2019), or otherwise held that 125 days of

Factoring in this additional evidence, the ALJ did not credit the Miner with any employment in 1983 based on his testimony that Employer was his last coal mine employer and because his reported wages were only eighty-eight dollars in 1983. MC Decision and Order on Remand at 9; MC Hearing Transcript at 54; MC Director’s Exhibit 7. The ALJ referenced the Miner’s consistent reporting of at least fifteen years of coal mine employment and his testimony that he was paid in cash for ten to twelve years by several smaller coal mines, noting “logic dictates that these cash payments overlapped with reported income as there is no 10 to 12 year gap in wages on the SSE[S].” MC Decision and Order on Remand at 9. She further determined there is no evidence to support that the Miner did not work full time in coal mines for this period. *Id.* Therefore, the ALJ found the Miner worked for a full year in each of the years from 1978 to 1982 and credited him with five years of coal mine employment for this period. *Id.*

Employer asserts the ALJ erred by “moving” some of the Miner’s cash coal mine work that he testified occurred earlier in his coal mine career to the period from 1978 to 1983 “to afford him maximum credit” and never resolved the actual number of years the Miner worked in coal mine employment for cash or explained how she arrived at the number of years for this portion of the Miner’s coal mine work. MC Employer’s Brief at 15-17; MC Employer’s Reply Brief at 3-5. In addition, it states the ALJ erred in not subtracting, like she did in her initial decision, time the Claimant spent working in construction jobs. MC Employer’s Brief at 12-13; MC Employer’s Reply Brief at 1-2. We agree with Employer’s position to the extent that the ALJ did not adequately explain, in compliance with the APA, how she credited the Miner with full years of coal mine employment from 1978 to 1982.

As we noted in our prior decision, the Miner testified that his “under the table” or cash wage coal mine employment occurred “when he was young,” when he hand-loaded coal. *Coleman*, BRB No. 23-0145, slip op. at 7; Hearing Transcript at 19-22, 33, 49. The ALJ found the Miner’s testimony that he worked ten to twelve years in such employment credible and permissibly found these years are spread out throughout his coal mine career. *See Stallard*, 876 F.3d at 668; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989) (en banc); MC Decision and Order on Remand at 3, 5, 8-9. However, the ALJ did not adequately explain how this cash wage coal mine employment was apportioned through

---

earnings establishes a year of coal mine employment. *Coleman*, BRB No. 23-0145 BLA, slip op. at 6 n.9. However, as we have noted, the Fourth Circuit has recently held that a miner need only show he “worked 125 working days within a calendar year (or partial periods totaling one year) to establish a year of employment.” *Baldwin v. Director, OWCP*, 170 F.4th 273, 282 (4th Cir. 2026); *see also Rhino Energy, LLC v. Director, OWCP [Rule]*, 174 F.4th 358, 367-68, 372-73 (4th Cir. 2026).

the three time periods she considered, especially given that she found eight years of documented coal mine employment from the fourth quarter of 1968 to the first quarter of 1977 out of the total fifteen years and two months of coal mine employment she calculated and given that the Miner's testimony that this cash wage coal mine employment occurred when he was young. *Wojtowicz*, 12 BLR at 1-165. Similarly, the ALJ found the Miner's testimony that he worked construction jobs for approximately three to four years during his total coal mine employment credible but did not explain how this time factored into her finding of full years of coal mine employment for this time period. *Id.*; MC Decision and Order on Remand at 9. Thus, we vacate the ALJ's finding that Claimant established five calendar years of coal mine employment from 1978 to 1983 and that Claimant established fifteen years and two months of total coal mine employment overall. Consequently, we also vacate the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption and the award of benefits in the miner's claim.

### **Remand Instructions for the Miner's Claim**

On remand, the ALJ<sup>17</sup> must reconsider the length of the Miner's coal mine employment for the period from 1978 to 1983. In doing so, she may use any reasonable method of calculation that is in accordance with law. *See Baldwin*, 170 F.4th at 287; *Muncy*, 25 BLR at 1-27; *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986). But she must address all relevant evidence and explain all material findings in accordance with the APA. *See Lockhart*, 137 F.3d at 803; *Wojtowicz*, 12 BLR at 1-165; *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984).

The ALJ must first determine whether the beginning and ending dates of the Miner's employment established a full calendar year of coal mine employment or partial periods totaling one year. 20 C.F.R. §725.101(a)(32). If the one-year calendar period is met, "it must be presumed, in the absence of evidence to the contrary, that the miner spent 125 working days in such employment[.]" in which case the Miner would be entitled to credit for one full year of coal mine employment. 20 C.F.R. §725.101(a)(32)(ii). If the one-year calendar period is not met, the ALJ must determine the number of days the Miner worked during any of the partial years of coal mine employment; if that calculation yields at least

---

<sup>17</sup> We reject Employer's assertion that this case should be reassigned to a different ALJ for a "fresh look" at the evidence. The ALJ made a good faith effort to comply with the Board's prior instructions and, given the intervening change in Fourth Circuit law concerning the calculation of a year of coal mine employment, it makes sense for her to reconsider the evidence. MC Employer's Brief at 2, 7; *see Baldwin*, 170 F.4th at 287; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 537 (4th Cir. 1998); *Cochran v. Consolidation Coal Co.*, 16 BLR 1-101, 1-107 (1992).

125 working days, the Miner can be credited with a year of coal mine employment, regardless of the actual duration of employment for the year. *Baldwin*, 170 F.4th at 287.

If the ALJ finds Claimant established the Miner had at least fifteen years of qualifying coal mine employment, she will have invoked the Section 411(c)(4) presumption, and the ALJ may reinstate her determination that Employer has not rebutted the presumption, as Employer has not challenged that finding. 20 C.F.R. §718.305(d)(1); see *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); MC 2022 Decision and Order at 41.<sup>18</sup> If Claimant cannot establish at least fifteen years of coal mine employment, the ALJ must consider whether Claimant can establish entitlement to benefits under 20 C.F.R. Part 718 in the miner's claim.

### **Survivor's Claim**

Having vacated the ALJ's award of benefits in the miner's claim, we also vacate her award of benefits in the survivor's claim<sup>19</sup> as Claimant's entitlement to derivative

---

<sup>18</sup> Employer states that because the ALJ's opinion "assumed the fifteen-year presumption's application, and because that finding was central to her award, [Employer] limits its recitation to facts central to [the Miner's] tenure." MC Employer's Brief at 8 n.2. Thus, it "reserves explicitly the right to challenge the ALJ's medical merits assessments under the correct standard of review" if less than fifteen years of coal mine employment is established. *Id.*

<sup>19</sup> The record reflects that the district director issued an amended award of benefits in the survivor's claim on December 11, 2025, based on a September 26, 2024 request from Claimant's adult child that she be added as an augmentee (disabled adult child) to the survivor's claim. Employer appealed this decision and the case was referred to the Office of Administrative Law Judges on March 17, 2026, noting that the miner's and survivor's claims were pending before the ALJ. The ALJ should consider these claims together on remand.

survivor's benefits under Section 422(*l*) of the Act<sup>20</sup> remains to be determined.<sup>21</sup> 30 U.S.C. §932(*l*); 20 C.F.R. §725.212(a). If the ALJ again awards benefits on remand in the miner's claim, Claimant is automatically entitled to survivor's benefits under Section 422(*l*). 30 U.S.C. §932(*l*). If the ALJ denies benefits in the miner's claim, she must consider Claimant's entitlement to survivor's benefits on the merits in the survivor's claim.

---

<sup>20</sup> In the interest of justice, we address Employer's contention that the ALJ erred in determining Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*) because the award of benefits in the miner's claim was not yet effective. SC Employer's Brief at 4-10; SC Employer's Combined Reply at 1. The Board has previously rejected this argument, holding an award of benefits in a miner's claim need not be final or effective for a claimant to receive benefits under Section 422(*l*), as the ALJ correctly noted. *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141, 1-145-47 (2014); SC Decision and Order at 3. For the reasons set forth in *Rothwell*, we reject Employer's argument. We further decline Employer's request to reconsider the Board's holding in *Rothwell*. SC Employer's Brief at 4-9; SC Employer's Combined Reply at 1.

<sup>21</sup> Consequently, we need not address Employer's request for consideration "en banc" of the survivor's claim. Survivor's Claim (SC) Employer's Brief at 4; SC Employer's Combined Reply at 1.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits on Remand and Decision and Order Awarding Survivor's Benefits Under the Automatic Entitlement Provisions of the Black Lung Benefits Act, and we remand the cases to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

JONATHAN ROLFE, Acting Chief  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge

GLENN E. ULMER  
Administrative Appeals Judge