U.S. Department of Labor

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

BRB Nos. 25-0093 BLA and 25-0094 BLA

DONNA FRALEY HALL
(Widow of and o/b/o the Estate of DAVID S. HALL)

Claimant-Respondent

v.

M & M B COAL COMPANY c/o ARCH RESOURCES, INCORPORATED

and

Self-Insured through ASHLAND COAL INCORPORATED

Employer/Carrier-Petitioners

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 02/06/2026

DECISION and ORDER

Appeal of the Decision and Orders Awarding Benefits on Modification in Miner Claim and Initial Surviving Widow Claim of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

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

Sara May (Jones & Jones Law Office PLLC), Pikeville, Kentucky, for Employer.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits on Modification in Miner Claim and Initial Surviving Widow Claim (2019-BLA-05222 and 2020-BLA-05971). This case involves Claimant's September 15, 2016 request for modification[1] of the Miner's denied subsequent claim and

[1] The Miner filed the current miner's claim on April 28, 2014. Miner's Director's Exhibit 3. The Miner died on August 7, 2015. Miner's Director's Exhibit 15. On March 21, 2016, the district director issued a Proposed Decision and Order Denying Benefits finding the Miner had pneumoconiosis but had not established he was totally disabled due to the disease. Miner's Director's Exhibit 80. On September 15, 2016, Claimant, the Miner's widow pursuing the claim on his behalf, filed a request for modification of the District Director's Proposed Decision and Order Denying Benefits. Miner's Director's Exhibit 82. The district director denied Claimant's request for modification. Miner's Director's Exhibit 107. Claimant requested a hearing before the Office of Administrative Law Judges (OALJ) and on November 20, 2018, the district director referred the claim for a formal hearing. Miner's Director's Exhibits 112, 113. On May 15, 2019, the OALJ remanded the claim to the district director so that proper notice and a complete copy of the file could be provided to Employer's counsel. Miner's Director's Exhibit 118. The district director referred the claim back to the OALJ on December 2, 2021. Miner's Director's Exhibit 125.

The Miner filed two prior claims for benefits, both of which the district director denied for failure to establish any element of entitlement. Miner's Director's Exhibits 1, 2. The district director denied the Miner's first claim on November 4, 1993, and the second on February 18, 2003. Miner's Director's Exhibits 1 at 30, 2 at 7.

a survivor's claim filed on September 26, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Employer is the responsible operator. He accepted the parties' stipulation of seventeen years of qualifying coal mine employment. On the merits of entitlement, he found Claimant established the Miner had a totally disabling respiratory or pulmonary impairment and therefore established a change in an applicable condition of entitlement and 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).[2] 20 C.F.R. §725.309(c). The ALJ also found Employer failed to rebut the presumption and awarded benefits. Based on the award of benefits in the miner's claim, he found Claimant derivatively entitled to survivor's benefits pursuant to Section 422(*l*) of the Act.[3] 30 U.S.C. §932(*l*) (2018).

On appeal, Employer argues the ALJ erred in redesignating Claimant's autopsy evidence and in finding Employer is the responsible operator. On the merits, Employer challenges the ALJ's finding that the Miner was totally disabled and therefore Claimant invoked the Section 411(c)(4) presumption, that Employer failed to rebut the presumption, and in the ALJ's granting of modification. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, filed a response brief urging the Board to affirm the ALJ's decision that Employer is the responsible operator liable for benefits in these cases.

The Benefits Review 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.[4] 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 (1965).

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled 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) (2018); 20 C.F.R. §718.305.

[3] 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).

[4] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because the Miner performed his last coal mine employment in Kentucky. *See*

Responsible Operator

The responsible operator is the potentially liable operator that most recently employed the miner for at least one year.[5] 20 C.F.R. §§725.494(c), 725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits, and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director properly identifies a potentially liable operator, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits or that another operator more recently employed the miner for at least one year and that operator is financially capable of assuming liability for benefits. *See* 20 C.F.R. §725.495(c).

The ALJ found the Miner worked as a coal miner for Employer in 1991 and 1992. Decision and Order at 7. He noted the Miner was subsequently employed by J&V Coal Company (J&V Coal) in 1992. *Id.* But the ALJ found J&V Coal did not employ the Miner for at least 125 days and thus could not be a subsequent operator. *Id.* The ALJ further noted Employer failed to establish J&V Coal Company is financially capable of assuming liability or show that Employer is incapable of paying benefits. *Id.* Thus, the ALJ found the Director properly identified Employer as the responsible operator. *Id.* at 8.

Employer contends the ALJ erred in ignoring employment records and the Miner's testimony which "establish at least 125 days for J&V Coal Company." Employer's Brief at 5-6 (unpaginated). We disagree.

Contrary to Employer's contentions, the ALJ considered the Miner's testimony and employment records establishing when the Miner started working for J&V Coal. *See* Decision and Order at 7; Miner's Director's Exhibits 8, 39. The ALJ noted the Miner's employment records showed his employment with J&V Coal began on January 16, 1992,

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Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Miner's Director's Exhibit 5; Hearing Transcript at 30.

[5] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

and his last date of employment was June 25, 1992. Decision and Order at 7. The ALJ noted that, although certain records indicated the Miner worked five days per week which would equate to 115 working days, the Miner testified he worked up to six days per week which would equate to 138 working days. *Id.* Further, the ALJ attempted to determine the number of the Miner's working days by dividing the Miner's total earned wages, $13,546.00, by his known hourly pay rate, $13.00 per hour. *Id.*

Nevertheless, the record contained conflicting evidence regarding how many hours the Miner worked per day, with some records indicating he worked eight hours per day while the Miner's and Claimant's testimony indicated he often worked ten or more hours per day. Decision and Order at 7. The ALJ determined "the unknown variable of how many hours the Miner worked on a given day renders uncertain the use of his hourly wage to determine the number of days worked" and therefore found it more reasonable to use the method of calculation provided in the regulations to determine the length of the Miner's employment. *Id.*; 20 C.F.R. § 725.101(a)(32)(iii); *Shepherd v. Incoal, Inc.,* 915 F.3d 392, 401 (6th Cir. 2019). Thus, dividing the Miner's total wages, $13,546.00, by the average daily earning amount, $137.60, the ALJ determined the Miner worked for 98.44 days for J&V Coal. *Id.* at 8. Thus, the ALJ permissibly found the Miner did not work the requisite 125 days for J&V Coal and therefore found Employer is properly designated the responsible operator in this claim. *Id.*

Moreover, the ALJ sufficiently explained his analysis in accordance with the Administrative Procedure Act (APA).[6] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see A & E Coal Co. v. Adams*, 694 F.3d 798, 802 (6th Cir. 2012) (APA "imposes on the ALJ a duty accurately and specifically to reference the evidence supporting his decision"). Employer's argument 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); *see also Clinchfield Coal Co. v. Director, OWCP* [*Vanderpool*], F.4th , No. 23-1667, slip op. at 15, 2026 WL 110951 (4th Cir. 2026) (where the ALJ acknowledges contrary evidence, explains why he finds it less persuasive, and grounds that assessment in the record and the applicable regulatory framework, the APA is satisfied even if Employer weighs the evidence differently). We therefore affirm the ALJ's finding that Employer is the responsible operator as it is supported by substantial evidence.

[6] The Administrative Procedure Act provides that every adjudicatory decision must include "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), as incorporated into the Act by 30 U.S.C. §932(a).

Decision and Order at 8; *see Ark. Coals, Inc., Lawson*, 739 F.3d 309, 322-23 (6th Cir. 2014).

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

Total Disability

A miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work.[7] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, 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 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 the Miner was totally disabled based on the Miner's treatment record evidence.[8] Decision and Order at 19-33.

The Miner's medical treatment records document his pulmonary and respiratory conditions and complaints including shortness of breath, dyspnea on exertion, productive cough, and wheezing between July 2014 and June 2015. Miner's Director's Exhibit 93 at 35-50. As early as September 2014, the treatment records note the Miner's need for overnight oxygen use. *Id.* at 47. Beginning in July 2015 until the Miner's death in August 2015, the treatment records continue to indicate complaints of shortness of breath, wheezing, and coughing as well as repeated instances of pulmonary edema, acute respiratory failure, and hypoxia. Miner's Director's Exhibit 87 at 3-15. The treatment records also document the Miner's need for supplemental oxygen and use of a Bilevel Positive Airway Pressure (BiPAP) machine due to decreases in his oxygen saturation. *Id.* at 10-13. The Miner's death certificate listed acute respiratory failure as the immediate

[7] The ALJ found the Miner's last coal mine employment job was working as a cutter operator. Decision and Order at 20. Because the Miner's job involved regularly lifting 25 to 100 pounds, the ALJ found the Miner's job involved heavy labor with occasional periods of very heavy labor. *Id.* As no party challenges this finding, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[8] The ALJ determined the pulmonary function studies, arterial blood gas studies, and medical opinion evidence do not support a finding of total disability, and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 19-30.

cause of death with coal workers' pneumoconiosis as a significant contributing cause and chronic obstructive pulmonary disorder as an additional contributing condition. Miner's Director's Exhibit 15.

In determining the Miner's treatment records support a finding of total disability, the ALJ found it reasonable to infer the Miner no longer had the respiratory or pulmonary capacity to perform his usual coal mine work because, immediately preceding his death, the Miner was on supplemental oxygen and in persistent respiratory failure. Decision and Order at 32. Noting the Board's holding in *Staten v. Consolidation Coal Co.*, BRB No. 22-0238 BLA (Jan. 5, 2024) (unpub.), he found the treatment records support the conclusion that the deceased Miner had a totally disabling respiratory impairment at the time of his death. *Id.*

In weighing all the evidence together, the ALJ found the treatment records weigh in favor of establishing that the Miner was totally disabled, the pulmonary function studies, arterial blood gas studies did not, and the medical opinion evidence was not probative. Decision and Order at 33.

Employer argues the ALJ erred in finding the Miner was totally disabled based on his treatment records. Employer's Brief at 6-7 (unpaginated). We disagree.

Treatment records may support a finding of total disability if they provide sufficient information from which the ALJ can reasonably infer a miner was unable to do his last coal mine job. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995). The ALJ reasonably inferred the Miner's need for continuous supplemental oxygen, which is undisputed, would have precluded him from performing his usual coal mine employment. *See Cornett*, 227 F.3d at 578; *see also Good Coal Co. v. Haynes*, No. 19-3142, slip op. at 3 (6th Cir., Dec. 6, 2019) (unpub.) (reasonable to conclude that physicians' reports that a miner was on oxygen and unable to leave his house implied inability to perform his usual coal mine employment).

To the extent Employer contends the ALJ erred in not requiring Claimant to establish the Miner's impairment was due to a "chronic" rather than an "acute" disease, we reject its argument. Employer's Brief at 7-8 (unpaginated). Nothing in the Act or regulations requires a showing that the Miner's total disability was chronic in order to invoke the Section 411(c)(4) presumption. *Consol. Coal Co. v. Director, OWCP* [*Staten*], 129 F.4th 409, 414 (7th Cir. 2025). The relevant inquiry for invocation of the Section 411(c)(4) presumption is whether the Miner had a totally disabling respiratory impairment, not whether the Miner had a disability for some undefined time period to be considered "chronic." 20 C.F.R. §718.305(b)(1)(iii); *Staten*, 129 F.4th at 414-16 (nothing in the text

of the Act or the regulatory definition of total disability requires proof that the miner was suffering from a chronic pulmonary condition to establish total disability and invoke the 15-year presumption).

Further, Employer's argument amounts to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson*, 12 BLR at 1-113. It is the ALJ's responsibility to weigh the evidence, draw inferences, and determine credibility. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989). The Board is not empowered to engage in a de novo review but rather is limited to reviewing the ALJ's decision for errors of law and determining whether the factual findings are supported by substantial evidence. *Director, OWCP v. Rowe*, 710 F.2d 251, 254-55 (6th Cir. 1983). Because it is supported by substantial evidence, we affirm the ALJ's determination that the Miner's treatment records support a finding of total disability. *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005) (substantial evidence is defined as relevant evidence that a reasonable mind might accept as adequate to support a conclusion). Further, we affirm the ALJ's conclusion that the evidence, when weighed together, establishes total disability. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; Decision and Order at 33.

Because we affirm the ALJ's findings that the Miner had more than fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment, we also affirm her conclusions that Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis and established a change in an applicable condition of entitlement. 20 C.F.R. §§718.305(b)(1), 725.309(c); Decision and Order at 34.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish that the Miner had neither legal nor clinical pneumoconiosis,[9] or

[9] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconiosis, *i.e*., the condition 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). "Legal pneumoconiosis" refers to "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The 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).

"no part of [his] 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)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method. Decision and Order at 34-39.

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 five medical opinions and found Employer failed to meet its burden. Decision and Order at 36-39. Dr. Dahhan opined the Miner demonstrated no evidence of any impairment and thus did not have legal pneumoconiosis. Employer's Exhibits 2-3. The ALJ found Dr. Dahhan's opinion not well-reasoned or documented because the definition of legal pneumoconiosis encompasses "any chronic lung disease *or* impairment" and Dr. Dahhan failed to persuasively address how coal mine dust exposure did not cause or contribute to the Miner's complaints of cough, wheezing, shortness of breath, or dyspnea. Decision and Order at 37-38. In addition, the ALJ found Drs. Rosenberg and Vuskovich's opinions were not probative on the issue of legal pneumoconiosis as they did not address the issue, and that the opinions of Drs. Cordasco and Perper did not aid Employer in rebutting the presumption, as they diagnosed legal pneumoconiosis. *Id.* at 37-39.

While Employer generally alleges the ALJ erred in his weighing of the medical opinion evidence, Employer does not argue with specificity why the ALJ's consideration of the medical opinion evidence on the issue of legal pneumoconiosis was improper. *See Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120 (1987) (unless the party identifies errors and briefs its allegations of error in terms of the relevant law and evidence, the Board has no basis for review); Employer's Brief at 8-9 (unpaginated). Employer's argument amounts to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson*, 12 BLR at 1-113. Thus, we affirm the ALJ's finding that the medical opinion evidence did not establish the absence of legal pneumoconiosis.[10]

[10] Employer argues the ALJ erred by improperly redesignating one of Claimant's proffered autopsy reports for purposes of the evidentiary limitations at 20 C.F.R. §725.414(a)(2)(i), but Employer has not explained how any such potential error would affect the outcome: the ALJ did not rely on the autopsy evidence to establish total disability nor does it support Employer's burden on rebuttal, and the ALJ did not consider it on

Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1).

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); *see* Decision and Order at 39-40. He discredited the opinions of Drs. Dahhan and Rosenberg because they did not diagnose either clinical or legal pneumoconiosis, contrary to his finding that Employer failed to disprove the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (where a physician erroneously fails to diagnose pneumoconiosis, his opinion as to disability causation "is not worthy of much, if any, weight"); Decision and Order at 39-40. Because Employer raises no specific arguments on disability causation apart from its assertion that the ALJ erred in finding it failed to disprove the existence of legal pneumoconiosis, we affirm the ALJ's finding that Employer failed to establish no part of the Miner's total disability was caused by legal pneumoconiosis. *See Ogle*, 737 F.3d at 1074; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 39-40.

We therefore affirm the ALJ's finding that Employer failed to establish rebuttal at 20 C.F.R. §718.305(d)(1)(ii).[11] Thus, we affirm the award of benefits in the miner's claim.[12]

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rebuttal. *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 4 (unpaginated).

[11] Employer further argues the ALJ erred in granting modification, but as Employer does not make this argument with specificity, we decline to consider it. *See Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120 (1987) (unless the party identifies errors and briefs its allegations of error in terms of the relevant law and evidence, the Board has no basis for review).

[12] Employer's allegation of error concerning the ALJ's date of entitlement finding is based entirely on its contention that Claimant is not entitled to an award of benefits, which we have rejected. Employer's Brief at 10 (unpaginated). Therefore, we need not consider this argument.

The Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge[13] to the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); *Skrack*, 6 BLR at 1-711.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits in Miner's and Survivor's Claims.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

[13] Employer's allegations of error concerning the Survivor's Claim are contingent on Claimant not being entitled to an award of benefits in the Miner's claim, which we have affirmed.