BRB Nos. 23-0469 BLA
and 23-0470 BLA

MARIAN L. BAKER (o/b/o and Widow of JAMES G. BAKER) Claimant-Petitioner v. WEBSTER COUNTY COAL CORPORATION Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 03/31/2025 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jerry R. DeMaio, Administrative Law Judge, United States Department of Labor.

Austin P. Vowels (Vowels Law PLC), Henderson, Kentucky, for Claimant.

Before: GRESH, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Jerry R. DeMaio's Decision and Order Denying Benefits (2017-BLA-05439 and 2018-BLA-05443) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018)

(Act).[1] This case involves a miner's claim filed on March 29, 2016, and a survivor's claim filed on October 19, 2017.[2]

The ALJ accepted the parties' stipulation that the Miner had at least twelve years of qualifying coal mine employment and thus found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[3] Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established the Miner was totally disabled, 20 C.F.R. §718.204(b)(2), but did not establish he had clinical or legal pneumoconiosis. Thus, the ALJ denied benefits in the miner's claim.

In the survivor's claim, the ALJ first determined that because the Miner was not entitled to benefits, Claimant is not automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[4] He further found Claimant did not

[1] Claimant is the widow of the Miner, who died on December 28, 2017, while his claim was pending before the ALJ. Survivor's Claim (SC) Director's Exhibit 2. She is pursuing the miner's claim on his behalf as well as her own survivor's claim. SC Director's Exhibits 1, 6.

[2] The Benefits Review Board dismissed, without prejudice and as premature, prior appeals regarding these claims because the ALJ had not ruled on Employer's Motion for Reconsideration. *Baker v. Webster Cnty. Coal Corp.*, BRB Nos. 20-0250 BLA and 20-0282 BLA (Nov. 20, 2020) (Order) (unpub.). On October 22, 2021, the ALJ ruled on the motion. *See* Order of Clarification/Reconsideration. Claimant filed the current appeals on September 5, 2023, 682 days after the ALJ issued his order. Claimant's Notice of Appeal. Claimant explained that service of the Order of Clarification/Reconsideration was made on prior counsel, who passed away before its issuance, and current counsel was unaware of the order until September 1, 2023. *Id.* Consequently, the Board accepted Claimant's appeals as timely filed. *Baker v. Webster Cnty. Coal Co.*, BRB Nos. 23-0469 BLA and 22-0470 BLA (Nov. 16, 2023) (Order) (unpub.). The appeal in the miner's claim was assigned BRB No. 23-0469 BLA and the appeal in the survivor's claim was assigned BRB No. 22-0470 BLA. *Id.* The Board consolidated these appeals for decision only. *Id.*

[3] Section 411(c)(4) of the Act provides a rebuttable presumption the 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); *see* 20 C.F.R. §718.305.

[4] Under Section 422(*l*) of the Act, a survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without

establish either clinical or legal pneumoconiosis, an essential element of entitlement; thus, the ALJ also denied benefits in the survivor's claim.

On appeal, Claimant challenges the ALJ's determinations that she failed to establish the Miner had pneumoconiosis in either the miner's or the survivor's claim.[5] Neither Employer nor the Acting Director, Office of Workers' Compensation Programs, has 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.[6] 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).

Miner's Claim- Entitlement under 20 C.F.R. Part 718

Without the Section 411(c)(3) or Section 411(c)(4) presumptions,[7] Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR

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having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[5] We affirm as unchallenged the ALJ's findings of twelve years of coal mine employment and that Claimant therefore cannot invoke the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 17-18.

[7] The ALJ determined there was no evidence of complicated pneumoconiosis and thus Claimant is unable to invoke the irrebuttable presumption at Section 411(c)(3) that the Miner was totally disabled due to pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 26. We affirm this finding as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Clinical Pneumoconiosis

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). The ALJ must consider all relevant evidence and weigh the evidence as a whole to determine if it establishes the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 881 (6th Cir. 2012). Here, the ALJ considered x-rays, computed tomography (CT) scans, biopsies, and medical opinions to find Claimant failed to establish the presence of clinical pneumoconiosis.[8] Decision and Order at 27-29, 32.

Chest X-Rays

The ALJ considered nine interpretations of five chest x-rays dated April 20, 2016, August 4, 2016, January 15, 2017, April 5, 2017, and July 18, 2017. Decision and Order at 3-6, 26-27. He found all the interpreting physicians to be dually qualified as B readers and Board-certified radiologists and thus determined their readings are worthy of equal weight. *Id.* at 27. Because all three readings of the April 20, 2016 x-ray were positive for pneumoconiosis, the ALJ found this x-ray positive for the disease. *Id.*; Miner's Claim (MC) Director's Exhibits 10, 18; Claimant's Exhibit 5.[9] The August 4, 2016 and July 18, 2017 x-rays each received only a negative interpretation. Employer's Exhibits 2, 6. The ALJ therefore found both x-rays negative for pneumoconiosis. Decision and Order at 27. Finally, because the January 15, 2017 and April 5, 2017 x-rays each had one positive interpretation and one negative interpretation from equally qualified readers, the ALJ found the readings of both x-rays to be in equipoise for the presence of pneumoconiosis. Decision and Order at 27; Claimant's Exhibits 1, 2; Employer's Exhibits 4, 8. Based on his analysis

[8] Claimant does not challenge the ALJ's findings that the CT scan, biopsy, and medical opinion evidence do not support a finding of clinical pneumoconiosis. Claimant's Brief at 8; Decision and Order at 27-29, 32. Therefore, we affirm these findings. *See Skrack*, 6 BLR at 1-711.

[9] The ALJ admitted identical Claimant's Exhibits and Employer's Exhibits in both claims. *See* Status Hearing Transcript at 13-15; Claimant's Evidence Summary Form; Employer's Evidence Summary Form.

of the individual x-rays, the ALJ found the weight of the x-ray evidence to be negative for pneumoconiosis, "but only slightly so." Decision and Order at 27.

Claimant argues that the ALJ misapplied the later evidence rule, according more weight to more recent negative readings over the earlier positive reading. Claimant's Brief at 8-9 (citing *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993)). We disagree, as the ALJ did not indicate he was according the more recent negative x-rays greater weight than the earlier positive x-ray. Rather, given his finding that the experts' credentials warranted equal weight, and having found two negative x-rays, a single positive x-ray, and the readings of two x-rays in equipoise which weigh neither for nor against the presence of pneumoconiosis, the ALJ reasonably determined the x-ray evidence overall is negative for clinical pneumoconiosis. Decision and Order at 27; *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81 (1994); *see also Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 820 F.3d 833, 843 (6th Cir. 2016) (when evidence is in equipoise, its weight neither confirms nor disproves an issue).

As the ALJ performed both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' qualifications, their specific interpretations, and the number of readings of each film, we affirm his finding that Claimant did not establish clinical pneumoconiosis at 20 C.F.R. §718.202(a) as it is supported by substantial evidence.[10] *See Woodward*, 991 F.2d at 319-21; *see also Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); Decision and Order at 27.

As Claimant raises no arguments regarding the ALJ's weighing of the different categories of evidence together, we further affirm the ALJ's finding that Claimant did not establish that the Miner had clinical pneumoconiosis. Decision and Order at 32.

Legal Pneumoconiosis

To establish legal pneumoconiosis,[11] Claimant must prove the Miner had a chronic lung disease or an impairment "significantly related to, or substantially aggravated by, dust

[10] Claimant also generally contends that because Dr. Meyer initially interpreted an x-ray as positive, and the ALJ rejected his explanation as to why that earlier positive reading was wrong, his original positive x-ray should have been given greatest weight and definitively establishes clinical pneumoconiosis. Claimant's Brief at 9. Claimant's arguments are a request to reweigh the evidence, which the Board is not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

[11] "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 definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment

exposure in coal mine employment." 20 C.F.R. §718.201(a)(2), (b). The Sixth Circuit holds a miner can establish a lung impairment is significantly related to coal mine dust exposure "by showing that his disease was caused 'in part' by coal mine employment." *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) ("[I]n [*Groves*] we defined 'in part' to mean 'more than a *de minimis* contribution' and instead 'a contributing cause of some discernible consequence.'").

The ALJ considered the opinions of Drs. Chavda, Baker, Sood, Selby, and Broudy. Decision and Order at 29-31. Drs. Chavda, Baker, and Sood all diagnosed the Miner with legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD), finding both cigarette smoke and coal mine dust exposure contributed to his disease. MC Director's Exhibits 10, 20; Employer's Exhibits 13, 14; Claimant's Exhibits 7, 9. Dr. Selby diagnosed the Miner with COPD due to smoking and asthma, both unrelated to his coal mine dust exposure. MC Director's Exhibit 19; Employer's Exhibit 5. Similarly, Dr. Broudy opined that the Miner had COPD due to his "long [and] heavy" smoking history and unrelated to his coal mine dust exposure. Employer's Exhibits 12, 15.

The ALJ discredited Drs. Chavda's, Baker's, and Broudy's opinions because each physician considered inaccurate smoking histories. Decision and Order at 29-30. Further, he found that Dr. Chavda relied on an inaccurate coal mine employment history and Dr. Baker's opinion was at odds with the preamble to the 2001 amended regulations. *Id.* at 29-30. He determined that Drs. Sood and Selby both relied on accurate smoking and employment histories and were "well-qualified," but he found neither physician's opinion regarding legal pneumoconiosis was "definitively convincing" and thus accorded their conflicting opinions equal weight. *Id.* at 31. Therefore, the ALJ concluded that Claimant did not meet her burden to establish the Miner had legal pneumoconiosis. *Id.*

Claimant argues the ALJ erred in weighing the medical opinion evidence to find she failed to meet her burden. Claimant's Brief at 9-25. We address each of her arguments in turn.

Smoking History and Dependent Findings

Claimant argues the ALJ erred in finding the Miner smoked approximately fifty pack-years, as he did not consider Claimant's testimony on the issue, which she asserts undermines the ALJ's credibility determinations. Claimant's Brief at 7. We agree.

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significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

In his review of the smoking history evidence, the ALJ considered the Miner's reports to examining physicians who prepared opinions for the purposes of this litigation, as well as reports to his treating physicians. Decision and Order at 7. He noted the evidence indicated a smoking history ranging from fifteen pack years to 70.5 pack years. *Id.* The Miner's reports to physicians who prepared opinions for the purposes of this litigation include a lesser smoking history of thirty to thirty-five years at one-half pack to one pack per day, while his treating physicians reported up to fifty years at one to one-and-one-half packs per day. *Id.* The ALJ found the treatment record evidence to be more probative than the Miner's statements to physicians who prepared opinions for the purposes of this litigation, as the Miner was more likely to be forthcoming about his smoking history when seeking appropriate treatment for his lung cancer diagnosis. *Id.* at 8. Thus, he found the Miner had a smoking history of "approximately" fifty pack-years, ending in 2014. *Id.* The ALJ then reviewed the medical opinion evidence regarding legal pneumoconiosis and discredited the opinions of Drs. Chavda, Baker, and Broudy as inconsistent with his smoking history finding, while he credited the opinions of Drs. Sood and Selby as consistent with it. *Id.* at 30.

As Claimant correctly asserts, the ALJ did not consider her testimony that the Miner smoked for forty years at a rate of a half-pack per day, which is consistent with other reports in the record. Claimant's Brief at 7; *see* Director's Exhibits 10, 19; Claimant's Exhibits 4, 7; Employer's Exhibits 5, 12. As the ALJ found the Miner's smoking history important to the credibility of the experts' opinions regarding legal pneumoconiosis and weighed their opinions based on their consistency with his finding on the issue, we vacate his smoking history finding for failing to consider this relevant evidence. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002*)*; *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683, 1-686 (1985) (ALJ is responsible for making a factual determination as to the length and extent of a miner's smoking history and the effect of an inaccurate smoking history on the credibility of a medical opinion); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (failure to discuss relevant evidence requires remand); Decision and Order at 29-30. Thus, we also vacate the ALJ's credibility determinations based on his smoking history finding.[12] Decision and Order at 30.

[12] While the ALJ's findings regarding the Miner's smoking history partly undermined his findings regarding Dr. Chavda's opinion, the error is harmless as the ALJ found the doctor's opinion not credible for a permissible reason, as discussed below. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

Dr. Chavda

Claimant also argues the ALJ mischaracterized Dr. Chavda's legal pneumoconiosis opinion as based on a twenty-year coal mine employment history, contrary to the ALJ's finding that the Miner had only twelve years. Claimant's Brief at 10-11. Claimant asserts it was "clear" that Dr. Chavda relied on twelve years of coal mine employment in coming to his conclusions, citing various instances in the record, while the ALJ relied solely on a "misstatement" the doctor made during his deposition to find he relied on the greater history of twenty years. *Id.* at 11. We disagree.

In evaluating Dr. Chavda's opinion, the ALJ directly addressed the discrepancy between Dr. Chavda's initial report, wherein he stated the Miner had twelve years of coal mine employment, and Dr. Chavda's subsequent deposition, wherein he indicated the Miner had twenty years of coal mine employment. Decision and Order at 29; MC Director's Exhibit 10; Employer's Exhibit 13. The ALJ permissibly determined the discrepancy diminished the credibility of Dr. Chavda's opinion, as the ALJ found it unclear whether the doctor's ultimate opinion was based on a twelve- or twenty-year coal mine employment history. *See Napier*, 301 F.3d at 713-14 (it is the ALJ's function to weigh the credibility of the evidence); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986) (report may be given little weight where it is internally inconsistent); *Hutchens v. Director, OWCP*, 8 BLR 1-16, 1-19 (1985) (ALJ must consider factors that tend to undermine the reliability of a physician's conclusions before accepting the medical opinion). Therefore, we affirm the ALJ's discrediting of Dr. Chavda's opinion that the Miner had legal pneumoconiosis. Decision and Order at 29.

Dr. Baker

In addition to finding Dr. Baker's opinion undermined for relying on an underestimated smoking history, the ALJ discredited his opinion as inconsistent with the principles underlying the preamble to the amended 2001 regulations. Decision and Order at 29. Claimant contends the ALJ chose a "single line" from Dr. Baker's deposition testimony to find he opined that smoking and coal mine dust are additive in *every* case, which the ALJ indicated is inconsistent with the preamble. Claimant's Brief at 14-16. Claimant's argument has merit.

As Claimant indicates, Dr. Baker noted in his report that the effects of cigarette smoke and coal mine dust exposure may be additive. *See* Claimant's Brief at 14-15 (citing Claimant's Exhibit 7 at 3). Similarly, the doctor explained in his deposition testimony that there "may be a synergistic or additive effect" or "potential" additive effect in causing obstruction in individuals with both exposures. Claimant's Brief at 15 (citing Employer's Exhibit 14 at 12, 13, 16, 21). However, as the ALJ found and Claimant acknowledges, Dr. Baker also stated at least once in his deposition that there is an additive effect in every

miner who smokes. Decision and Order at 29; Employer's Exhibit 14 at 13-14; *see* 65 Fed. Reg. 79,920, 79,939-41 (Dec. 20, 2000).[13] As the ALJ did not resolve this apparent conflict in Dr. Baker's opinion, and it is not within our purview to weigh the evidence, we also vacate his discrediting of the doctor's opinion on this basis. *See Director, OWCP v. Rowe*, 710 F.2d 251, 254-255 (6th Cir. 1983) (it is the ALJ's duty to weigh and assess the credibility of the evidence); *Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989); Decision and Order at 29.

Drs. Sood and Selby

The ALJ credited and criticized both Drs. Sood's and Selby's opinions, finding they were worthy of "equal weight" and, having discredited the remaining opinions, determined the weight of the evidence was insufficient to meet Claimant's burden to establish the Miner had legal pneumoconiosis. Decision and Order at 30-31.

Claimant argues the ALJ applied the wrong legal standard in weighing Drs. Sood's and Selby's opinions because the ALJ incorrectly emphasized the need for a "dominant" contributing factor in determining whether the Miner had legal pneumoconiosis. Claimant's Brief at 24. We agree.

The ALJ found Dr. Sood's opinion equivocal as to whether the Miner had legal pneumoconiosis because he "explicitly" acknowledged coal mine dust exposure may not be the "dominant cause" of the Miner's COPD. Decision and Order at 31. As Claimant correctly indicates, however, she is not required to prove that coal mine dust exposure was a "dominant" cause of the Miner's disease to prove the presence of legal pneumoconiosis. Claimant's Brief at 19-20. Rather, legal pneumoconiosis "includes any chronic lung

[13] The preamble to the amended 2001 regulations states:

> Lung function . . . decline[s] in relation to increasing underground dust exposure . . . . This decline occurs at a similar rate in smokers and nonsmokers[;] although the loss of lung function overall is greater in smokers, *the two effects being additive*.

65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000) (emphasis added). The preamble also quotes studies indicating "the *combined effects* of coal mine dust and smoking . . . appear to be additive" and "the major damage caused by cigarette smoking *is additive* to the minor damage which can be attributed to coal dust." *Id.* at 79,941 (emphasis added). It further states "[s]mokers who mine have *additive risk* for developing significant obstruction . . . [and] chronic bronchitis." *Id.* at 79,940 (emphasis added).

disease or impairment and its sequelae arising out of coal mine employment . . . significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2), (b). The Sixth Circuit has explained this standard can be satisfied "by showing that [the Miner's] disease was caused 'in part' by coal mine employment." *Groves*, 761 F.3d at 598-99. As the ALJ applied an incorrect legal standard in considering Drs. Sood's opinion and it is unclear to what extent the ALJ also relied upon this incorrect premise in evaluating Dr. Selby's opinion, we vacate his weighing of their opinions. Decision and Order at 31.

Additionally, the ALJ's basis for according Dr. Sood's opinion less weight regarding the latency period between the Miner's coal mine dust exposure and the onset of his symptoms is unclear. Claimant's Brief at 21-22; Decision and Order at 31. The ALJ found Dr. Sood's opinion undermined insofar as he relied on the assumption that the Miner's symptoms began while he was still working in the mines, contrary to the ALJ's factual finding that his symptoms did not manifest until "well after" the Miner ceased coal mine employment. Decision and Order at 19-20, 31. However, the ALJ also acknowledged that Dr. Sood explained the latency period between exposure and onset of symptoms of one to two decades is "adequate" for the development of pneumoconiosis. Decision and Order at 31; Claimant's Exhibit 9 at 14. He also found neither Dr. Sood nor Dr. Selby cited any medical authority "on the issue of whether pneumoconiosis can first become evident after [coal mine employment] ceases." Decision and Order at 31. However, the regulations directly address that issue. *See* 20 C.F.R. §718.201(c). As Claimant points out, Dr. Sood's opinion is arguably consistent with the regulation's recognition that pneumoconiosis is a "latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." *Id.*; Claimant's Brief at 22; Claimant's Exhibit 9. Because we cannot determine the bases for the ALJ's according less weight to Dr. Sood's diagnosis of legal pneumoconiosis based on the latency of the Miner's symptoms, we also vacate this finding. *See Wojtowicz*, 12 BLR at 1-165; *see also Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997) (ALJ must adequately explain credibility findings).

Thus, we further vacate the ALJ's finding that Claimant failed to establish the Miner had legal pneumoconiosis and remand the miner's claim for further consideration. Decision and Order at 31. Finally, as the ALJ's findings in the survivor's claim are dependent on his findings in the miner's claim, we also vacate the denial in the survivor's claim and remand for further consideration. *Id.* at 32-33.

Remand Instructions

On remand, the ALJ must first reconsider all relevant evidence regarding the Miner's smoking history, resolve the conflict in the evidence, and explain his weighing of

the evidence in accordance with the Administrative Procedure Act (APA).[14] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165. He must then reweigh the medical opinions of Drs. Baker, Broudy, Selby, and Sood to determine whether the medical opinion evidence supports a finding that the Miner had legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), 718.202. In rendering his findings on remand, the ALJ must explain the bases for his credibility determinations, findings of fact, and conclusions of law as the APA requires. 5 U.S.C. §557(c)(3)(A); 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165.

If Claimant establishes legal pneumoconiosis, the ALJ should then consider if the Miner was totally disabled due to pneumoconiosis. 20 C.F.R. §718.204(c). If Claimant establishes total disability due to pneumoconiosis, Claimant will have established the Miner's entitlement to benefits. Alternatively, if Claimant does not establish legal pneumoconiosis, the ALJ must deny benefits in the miner's claim, as Claimant failed to establish a necessary element of entitlement. *See Anderson*, 12 BLR at 1-113; *Trent*, 11 BLR at 1-27*; Perry*, 9 BLR at 1-2.

On remand, should the ALJ award benefits in the miner's claim, Claimant is derivatively entitled to benefits in the survivor's claim. 30 U.S.C. §932(*l*). However, if the ALJ again denies benefits in the miner's claim for failure to establish pneumoconiosis, he may again deny benefits in the survivor's claim, as the evidence regarding the presence of pneumoconiosis is the same in both claims.

[14] 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).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits and remand both claims to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge