U.S. Department of Labor

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

BRB Nos. 24-0216 BLA
and 24-0217 BLA

GRACE BYRGE (o/b/o and Widow of BILLY BYRGE) Claimant-Respondent v. CONSOL MINING COMPANY, LLC and CONSOL ENERGY, INCORPORATED c/o SMART CASUALTY CLAIMS SVC Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 03/25/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Lauren C. Boucher, Administrative Law Judge, United States Department of Labor.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

Amanda Torres (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Acting

Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Lauren C. Boucher's Decision and Order Awarding Benefits (2022-BLA-05039 and 2022-BLA-05050) 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 August 26, 2020,[2] and a survivor's claim filed on January 27, 2021.[3]

The ALJ credited the Miner with at least twenty-eight years of underground coal mine employment and found Claimant[4] 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,[5] 30

[1] By Order dated January 31, 2024, the ALJ admitted evidence from the Miner's prior claims as ALJ's Exhibits 1 and 2. *See* Jan. 31, 2024 Order Admitting Prior Claim Files to the Record at 2.

[2] This is the Miner's seventh claim for benefits. He withdrew four of his prior claims. ALJ's Exhibit 1 at 14 (unpaginated); Miner's Claim (MC) Director's Exhibit 50 at 7. A withdrawn claim is considered not to have been filed. *See* 20 C.F.R. §725.306. On June 27, 2019, the district director denied the Miner's most recent prior claim, filed on September 7, 2018, because he failed to establish total disability. ALJ's Exhibit 2 at 3 (unpaginated).

[3] Employer's appeal in the miner's claim was assigned BRB No. 24-0216 BLA, and its appeal in the survivor's claim was assigned BRB No. 24-0217 BLA. The Benefits Review Board has consolidated these appeals for purposes of decision only.

[4] Claimant is the widow of the Miner, who died on January 9, 2021, while his claim was pending before the district director. MC Director's Exhibit 11; Survivor's Claim (SC) Director's Exhibit 7. She is pursuing the miner's claim on her husband's behalf and her own survivor's claim. SC Director's Exhibits 2, 18.

[5] 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

U.S.C. §921(c)(4) (2018), and established a change in an applicable condition of entitlement.[6] 20 C.F.R. §725.309(c). She further found Employer did not rebut the presumption and awarded benefits. Because the Miner was entitled to benefits at the time of his death, the ALJ also determined Claimant is automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[7]

On appeal, Employer argues the district director's failure to timely send it the Department of Labor (DOL)-sponsored pulmonary evaluation of the Miner violated its due process rights. It also asserts the district director's failure to timely admit into the record evidence from the Miner's prior claims violated its due process rights. Further, on the merits of entitlement, Employer contends the ALJ erred in finding Claimant established the Miner was totally disabled from a respiratory or pulmonary impairment.[8] Claimant has not filed a response brief. The Acting Director, Office of Workers' Compensation Programs (the Director), filed a limited response, urging the Board to reject Employer's due process arguments. Employer filed a reply brief reiterating its arguments.

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

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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.

[6] 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 failed to establish total disability in his prior claim, Claimant had to submit evidence establishing this element to obtain review of the merits of the Miner's current claim. *Id*.; *see White*, 23 BLR at 1-3.

[7] Section 422(*l*) of the Act provides that the survivor of a miner who was 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).

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

with applicable law.[9] 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).

Due Process Challenges

Dr. Forehand performed the DOL-sponsored complete pulmonary evaluation of the Miner on September 15, 2020. Miner's Claim (MC) Director's Exhibit 14; *see* 20 C.F.R. §725.406. On September 16, 2020, the district director issued a Notice of Claim (NOC) to the Miner and Employer. MC Director's Exhibit 26. The district director received Dr. Forehand's report on September 24, 2020. Director's Exhibit 14. As previously noted, the Miner died on January 9, 2021, while his claim was pending before the district director. MC Director's Exhibit 11; SC Director's Exhibit 7. On February 4, 2021, the district director sent Dr. Forehand's report and a Schedule for Submission of Additional Evidence (SSAE) to Employer. MC Director's Exhibit 36. On August 10, 2021, the district director issued a Proposed Decision and Order awarding benefits to the Miner. MC Director's Exhibit 50.

Employer argues the district director's failure to timely send it the DOL-sponsored complete pulmonary evaluation of the Miner pursuant to 20 C.F.R. §725.413[10] violated its due process rights and thus liability for the payment of benefits should transfer to the Black Lung Disability Trust Fund (Trust Fund). Employer's Brief at 9-10; Employer's Reply Brief at 2-6. It generally speculates that had the district director provided it with the DOL-sponsored complete pulmonary evaluation within thirty days of when it was conducted and before the Miner died, it could have had "timely notice of evidence supporting entitlement to benefits and would have had almost four months to obtain its own evaluation of [the Miner]." Employer's Reply Brief at 4. The Director responds, asserting that Employer has not been prejudiced by any delay in receiving the DOL-sponsored complete pulmonary evaluation and thus cannot establish a due process violation. Director's Brief at 4-10. We agree with the Director's argument.

Due process requires a party be afforded notice of the claim and the opportunity to respond. *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799 (4th Cir.

[9] 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. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 3.

[10] Section 725.413(c) requires "[e]ach party [to] disclose medical information the party or the party's agent receives by sending a complete copy of the information to all other parties in the claim within 30 days after receipt." 20 C.F.R. §725.413(c).

1998). The United States Court of Appeals for the Fourth Circuit has emphasized that "it is not the mere fact of the government's delay that violates due process, but rather the prejudice resulting from such delay." *Consolidation Coal Co. v. Borda*, 171 F.3d 175, 183 (4th Cir. 1999). Employer must demonstrate it was deprived of a fair opportunity to mount a meaningful defense against the claim. *See Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 883-84 (6th Cir. 2000); *Borda*, 171 F.3d at 184.

Although the Miner died before Employer received a copy of the DOL-sponsored complete pulmonary evaluation, the district director sent it timely notice of the claim prior to the Miner's death. MC Director's Exhibits 26, 36, 50. Thus, as the Director contends, Employer could have proceeded to develop medical evidence once it received notice of the claim, and it was Employer's choice to wait until it received the SSAE and the report of the Miner's complete pulmonary evaluations before proceeding that resulted in its inability to have its experts examine the Miner, not the district director's delay in furnishing a copy of the complete pulmonary evaluation.[11] Moreover, as the Director correctly notes, Employer had the opportunity to mount a defense, and it fully participated in the proceedings since receiving notice. Director's Brief at 6. Consequently, Employer has not demonstrated it was denied a meaningful opportunity to defend against the claim by the district director's failure to timely send it the DOL-sponsored complete pulmonary evaluation of the Miner. While we do not condone the district director's delay, under these facts that delay did not result in a denial of due process. *See Borda*, 171 F.3d at 184; *Holdman*, 202 F.3d at 883-84.

Employer also asserts the district director's and the ALJ's delays in admitting evidence from the Miner's prior claims into the record violated its due process rights. Employer's Brief at 6-10. We are not persuaded by its argument.

The district director stated the Miner's most recent prior claim filed on September 7, 2018, was "not subject to adjudication" and the remaining prior claims were withdrawn. MC Director's Exhibit 50 at 7. However, the district director acknowledged the Miner's

[11] We reject Employer's argument that the Director's statement that an operator is not precluded from beginning to develop its medical evidence until after receipt of the DOL-sponsored complete pulmonary evaluation is misleading because the Director's procedural manual provides that a miner cannot be required to perform testing until the SSAE is issued. Employer's Reply Brief at 5-6. Employer asserts no miner is "legally and practically" required to participate "in testing before the issuance of the SSAE." *Id*. at 6. Contrary to Employer's assertions, neither the Act nor the regulations preclude an operator from developing its medical evidence before the issuance of the SSAE. 20 C.F.R. §§725.405, 725.406, 725.407, 725.410.

current claim is a subsequent claim because it was filed more than one year after the denial of his most recent prior claim, which was denied for failure to establish total disability. MC Director's Exhibit 50 at 7, 9-10. The district director further found Claimant established total disability and thus a change in an applicable condition of entitlement at 20 C.F.R. §725.309. *Id.* at 9-10.

The ALJ noted it would have been "prudent" for Employer to raise its contention regarding the evidence from the Miner's prior claims before it filed its closing brief. Jan. 31, 2024 Order Admitting Prior Claims Files to the Record at 2; *see* Employer's Closing Brief at 2-3. Nonetheless, she admitted evidence from the Miner's December 4, 2015 and September 7, 2018 prior claims into the record and granted the parties an extension of time to designate additional exhibits, and to amend their evidence summary forms and closing briefs, before she issued her Decision and Order on the merits of the Miner's current claim. Jan. 31, 2024 Order Admitting Prior Claims Files to the Record at 2; ALJ's Exhibits 1 at 109 (unpaginated); 2 at 3 (unpaginated). She concluded the Miner's current claim is a subsequent claim, his most recent prior claim was denied for failure to establish total disability, and Claimant established a change in an applicable condition of entitlement by establishing the Miner was totally disabled. Decision and Order at 12; Director's Brief at 10-11.

Employer was a party to the prior claims that the Miner filed in 2015 and 2018 and was represented by the same law firm, as the proof of service pages indicate the district director provided Employer with NOCs and SSAEs in both of those claims. *See Consol of Kentucky, Inc. v. Madden*, 829 F. App'x 90, 97-98 (6th Cir. 2020) (failure to provide prior claim file was not a due process violation where an employer was a party to the original claim, was represented by the same law firm, and later received prior claim evidence and was "given an adequate opportunity to address [it]"); ALJ's Exhibits 1 at 7, 10, 40, 43 (unpaginated); 2 at 22, 25, 50, 53 (unpaginated). Further, the ALJ admitted evidence from the prior claims and provided the parties an opportunity to address it and to amend their closing briefs. Order Admitting Prior Claim Files to the Record. Employer therefore had adequate opportunity to review the records and address the evidence. But Employer did not amend its evidence summary form, file additional evidence, or take any further action pursuant to the ALJ's Order. *Id.*; *see* Director's Brief at 11-12. Consequently, Employer has not demonstrated how any alleged error that either the district director or the ALJ made prejudiced it or rose to the level of a due process violation. *See Energy West Mining Co. v. Oliver*, 555 F.3d 1211, 1219 (10th Cir. 2009) (recognizing "litigation is rarely pristine and is filled with risk" and the Due Process Clause's interest is only in whether an adjudicative procedure as a whole is sufficiently fair and reliable that the law should enforce its result); *see also N. Am. Coal Co. v. Miller*, 870 F.2d 948, 951 (3d Cir. 1989) (due process is violated when a party is given no opportunity to fully present its case).

We therefore reject Employer's assertions that its due process rights were violated and liability for the payment of benefits should transfer to the Trust Fund.

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.[12] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies and arterial blood gas studies,[13] 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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found Claimant established total disability based on the arterial blood gas studies, the medical opinions, and the evidence considered as a whole.[14] 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 8, 12.[15]

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[12] The ALJ found the exertional requirements of the Miner's usual coal mine work as a roof bolter required "heavy labor." Decision and Order at 4; *see* MC Director's Exhibit 4. As this finding is unchallenged, we affirm it. *See Skrack*, 6 BLR at 1-711.

[13] 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).

[14] The ALJ found Claimant did not establish total disability based on the pulmonary function studies and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 6 n.8, 7.

[15] We reject Employer's argument that the ALJ erred in failing to consider evidence from the Miner's prior claims filed on December 4, 2015, and September 7, 2018, including two non-qualifying arterial blood gas studies dated April 1, 2016, and November 20, 2018. Employer's Brief at 11-12; ALJ's Exhibits 1 at 67 (unpaginated); 2 at 62 (unpaginated).

Arterial Blood Gas Study Evidence

The ALJ considered the results of the September 15, 2020 arterial blood gas study. Decision and Order at 7; MC Director's Exhibit 14. She noted the study produced non-qualifying results at rest and qualifying results during exercise. Decision and Order at 8; MC Director's Exhibit 14 at 10; Employer's Brief at 13. She credited the qualifying exercise test over the non-qualifying resting test because it better assesses the Miner's gas exchange in the context of his ability to perform the exertional requirements of his usual coal mine work.[16] Decision and Order at 8; *see Coen v. Director, OWCP*, 7 BLR 1-30, 31-32 (1984) (ALJ permissibly credited exercise study over resting study); Decision and Order at 8. Therefore, she concluded the arterial blood gas study evidence supports a finding of total disability.

We reject Employer's argument that the ALJ erred in failing to consider Dr. Forehand's statement that the September 15, 2020 arterial blood gas study showed "no arterial hypoxemia" in determining it established total disability. Employer's Brief at 12-13; MC Director's Exhibit 14 at 3. Contrary to Employer's argument, the ALJ accurately noted Dr. Forehand's study "showed no arterial hypoxemia but impairment of gas exchange." Decision and Order at 9; *see* MC Director's Exhibit 14 at 3-4. Dr. Forehand concluded the study supports his opinion on total disability. MC Director's Exhibit 14 at 4. He further opined the study left the Miner "with inadequate gas exchange to return to, meet the physical demands of, or tolerate" his usual coal mine work. *Id*.

The ALJ stated she reviewed all the evidence of record on the issue of total disability, "*including evidence submitted with prior claims.*" Decision and Order at 12 (emphasis added). She permissibly found the evidence from the Miner's prior claims entitled to little weight because recent medical evidence is more probative of his current condition. *Mullins Coal Co. of Va. v. Dir., OWCP*, 484 U.S. 135, 151 (1987); *Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624 (6th Cir. 1988); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015); *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-49-52 (2023); *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 because of the progressive nature of pneumoconiosis); *Workman v. Eastern Associated Coal Corp.*, 23 BLR 1-22, 1-27 (2004) (en banc); Decision and Order at 12.

[16] As the ALJ's finding that the September 15, 2020 arterial blood gas study produced qualifying results during exercise is unchallenged, we affirm it. *See Skrack*, 6 BLR at 1-711.

We also reject Employer's assertion that the September 15, 2020 arterial blood gas study is unreliable because Dr. Forehand noted the Miner had pneumonia in August 2020 and "[t]here is nothing in his report to document why" the test "obtained soon after an acute respiratory disease" is reliable. Employer's Brief at 12-13; MC Director's Exhibit 14 at 2.

As Employer correctly states, arterial blood gas studies "must not be performed during or soon after an acute respiratory or cardiac illness." Appendix C to 20 C.F.R. Part 718; Employer's Brief at 13. However, Dr. Forehand's notation that the Miner had pneumonia in August 2020 does not indicate the September 15, 2020 arterial blood gas study was performed during or soon after an acute respiratory or cardiac illness. MC Director's Exhibit 14. Dr. Gaziano opined the results are "technically acceptable" and validated the study. Director's Exhibit 13 at 1. As Employer has not pointed to any evidence in support of its contention that the study is unreliable or invalid, and because there is evidence to the contrary, the ALJ permissibly found the qualifying exercise results of the September 15, 2020 arterial blood gas study support a finding of total disability. *See Vivian v. Director, OWCP*, 7 BLR 1-360, 361-62 (1984) (party challenging the validity of a study has the burden to establish the results are suspect or unreliable using affirmative evidence).

Because it is supported by substantial evidence, we affirm the ALJ's finding that the arterial blood gas study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005).

Medical Opinion Evidence

The ALJ next considered the medical opinions of Drs. Daniels, Fino, and Forehand. Decision and Order at 8-12; MC Director's Exhibit 14; Employer's Exhibits 1-3. Dr. Forehand opined the Miner was totally disabled from a respiratory standpoint based on the arterial blood gas study evidence, which showed he was unable to meet the exertional requirements of his usual coal mine work. MC Director's Exhibit 14 at 4-5. In contrast, Dr. Daniels opined the Miner suffered from "minimal" respiratory or pulmonary impairment without obstruction or restriction, and he was not disabled to "such an extent" that he would have been unable to perform the exertional requirements of his usual coal mine work. Employer's Exhibit 1 at 10-11. Similarly, Dr. Fino opined the results of the Miner's elevated pCO2 levels on his blood gas study were not disabling and he did not suffer from a totally disabling respiratory or pulmonary impairment. Employer's Exhibit 3 at 8.

The ALJ found Dr. Forehand's opinion reasoned and documented because he considered the exertional requirements of the Miner's usual coal mine work and relied on objective testing to support his conclusions. Decision and Order at 11; *see 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). Further, she found the opinions of Drs. Daniels and Fino not well-reasoned and entitled to little weight because they failed to adequately explain how they determined the Miner was not totally disabled and they did not reconcile the results of the qualifying exercise arterial blood gas study with their conclusions. *Id*. She thus found the medical opinion evidence supports a finding of total disability based on Dr. Forehand's opinion. Decision and Order at 12.

We reject Employer's argument that the ALJ's total disability finding is flawed because Drs. Daniels and Fino "explained the elevated pCO2 [on the Miner's blood gas study] was not linked to pneumoconiosis" and opined there is "no medical evidence" that the Miner's "death was caused by pneumoconiosis." Employer's Brief at 16. Contrary to Employer's assertions, the relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether a miner had a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); *Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-5-7 (2023), *appeal docketed*, No. 23-3612 (6th Cir. Jul. 25, 2023).

Finally, Employer's argument that the ALJ should have given the opinions of Drs. Daniels and Fino greater weight than Dr. Forehand's contrary opinion because they reviewed more evidence and offered a more "thorough and complete analysis" amounts 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); Employer's Brief at 14-15.

Because it is supported by substantial evidence, we affirm the ALJ's finding that 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. *See* 20 C.F.R. §718.204(b); *Rafferty*, 9 BLR at 1-232; *Shedlock,* 9 BLR at 1-198; Decision and Order at 12. Consequently, we affirm the ALJ's finding that 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; Decision and Order at 12-13.

We further affirm, as unchallenged, the ALJ's finding that Employer failed to rebut the presumption and therefore affirm the award of benefits in the miner's claim. *See* 20 C.F.R. §718.305(d)(1)(i), (ii); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 19-21.

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 pursuant to Section 422(*l*). 30 U.S.C. §932(*l*) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); Decision and Order at 21.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge