U.S. Department of Labor

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

BRB Nos. 24-0319 BLA, 24-0319 BLA-A,
24-0323 BLA, and 24-0323 BLA-A

SHIRLEY MAYNARD (o/b/o and Widow of HAROLD MAYNARD) Claimant-Petitioner Cross-Respondent v. PREPARATION MAINTENANCE, INCORPORATED and WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND Employer/Carrier-Respondents Cross-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	**NOT-PUBLISHED** DATE ISSUED: 05/29/2025 DECISION and ORDER

Appeal of the Decisions and Orders Denying Benefits of Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan P.S.C.), South Williamson, Kentucky, for Claimant.

Chris M. Green and Wesley A. Shumway (Spilman Thomas & Battle, PLLC), Charleston, West Virginia, for Employer and its Carrier.

Jeffrey S. Goldberg (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: BOGGS, ROLFE, and JONES, Administrative Appeals Judges.

BOGGS and JONES, Administrative Appeals Judges:

Claimant appeals and Employer and its Carrier (Employer) cross-appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decisions and Orders Denying Benefits (2022-BLA-05216 and 2022-BLA-05237) 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 filed on January 27, 2020,[1] and a survivor's claim filed on November 18, 2021.[2]

In the miner's claim, the ALJ credited the Miner with 15.54 years of underground or substantially similar surface coal mine employment. He found Claimant did not establish the Miner had complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. Further, he found Claimant did not establish the Miner had a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and thus could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R.

[1] On June 19, 2017, the district director denied the Miner's prior claim, filed on August 22, 2016, for failure to establish any element of entitlement. Miner's Claim (MC) Director's Exhibit 1.

[2] Claimant is the widow of the Miner, who died on September 29, 2021. MC Director's Exhibit 18; Survivor's Claim (SC) Director's Exhibit 3. She is pursuing the miner's claim on behalf of her husband's estate and her own survivor's claim. MC Director's Exhibit 71.

[3] 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

§718.305, or establish a change in an applicable condition of entitlement, 20 C.F.R. §725.309.[4] Based on Claimant's failure to establish total disability,[5] an essential element of entitlement under 20 C.F.R. Part 718, the ALJ denied benefits in the miner's claim.

In the survivor's claim, the ALJ found Claimant did not invoke the presumption of death due to pneumoconiosis at Section 411(c)(4) based on her failure to establish total disability, 20 C.F.R. §718.305, and that the evidence does not establish the Miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c). Thus he denied benefits in the survivor's claim.

On appeal, Claimant argues the ALJ erred in finding the Miner was not totally disabled. The Acting Director, Office of Workers' Compensation Programs (the Director), also argues the ALJ erred in weighing the evidence on total disability. Employer responds in support of the denial of benefits in both claims.

On cross-appeal, Employer argues the ALJ erred in his consideration of the pulmonary function study evidence on the issue of total disability.[6] Neither Claimant nor the Director has filed a response to the cross-appeal.

The Benefits Review 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

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respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he 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 failed to establish any element of entitlement in his prior claim, Claimant had to submit new evidence establishing any element of entitlement to obtain review of the merits of the Miner's current claim. *Id.*

[5] The ALJ also found Claimant failed to establish the Miner had pneumoconiosis.

[6] We affirm, as unchallenged on appeal, the ALJ's finding that the Miner had at least fifteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); MC Decision and Order at 11; SC Decision and Order at 7.

in accordance with applicable law.[7] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Miner's Claim

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 work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[8] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The ALJ found the pulmonary function studies support total disability, whereas the arterial blood gas studies and medical opinions do not support total disability, and there is no evidence of cor pulmonale with right-sided congestive heart failure.[9] 20 C.F.R. §718.204(b)(2)(i)-(iv); MC Decision and Order at 30-34. He then found Claimant did not establish the Miner had a totally disabling respiratory impairment. MC Decision and Order at 32-34.

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[7] 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 Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 28-29.

[8] A "qualifying" pulmonary function study or arterial blood gas study yields values 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 exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[9] We affirm, as unchallenged on appeal, the ALJ's findings that the arterial blood gas study 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. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b)(2)(ii)-(iv); MC Decision and Order at 30-34.

Employer's Cross-Appeal – Pulmonary Function Studies

Except in limited circumstances not present here, an ALJ cannot rely on invalid pulmonary function studies to support total disability, 20 C.F.R. §718.103(c); therefore, initially, we address Employer's cross-appeal challenging the ALJ's weighing of the pulmonary function study evidence.[10] Employer's Brief at 43-49.

The ALJ considered four pulmonary function studies dated December 5, 1988, October 6, 2016, November 5, 2019, and March 4, 2020. 20 C.F.R. §718.204(b)(2)(i); MC Decision and Order at 14-15, 30-32. The December 5, 1988 and October 6, 2016 studies produced non-qualifying values. MC Director's Exhibit 14 at 3; Prior Claim Director's Exhibit 18 at 5. The November 5, 2019 and March 4, 2020 studies produced qualifying values pre-bronchodilator, and the March 4, 2020 study also produced qualifying values post-bronchodilator.[11] MC Director's Exhibits 21 at 13; 30 at 2. The ALJ gave less weight to the December 5, 1988 and November 5, 2019 studies because he found they do not conform to the quality standards, and to the October 6, 2016 study because it was not submitted as affirmative evidence by the parties. MC Decision and Order at 30-32. He found the March 4, 2020 study is valid and gave it the greatest weight based on its recency. *Id.* at 31-32. He thus determined the pulmonary function study evidence supports a finding of total disability. *Id*. at 32.

Employer contends the ALJ erred in finding the March 4, 2020 pulmonary function study is valid.[12] Employer's Brief at 43-49. Employer's argument has merit.

When considering pulmonary function study evidence, an ALJ must determine whether the studies are in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, App. B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). In the absence of evidence to the contrary, compliance with the quality standards is presumed. 20 C.F.R. §718.103(c); *see also* 20 C.F.R. Part 718, App. B. Thus, the party challenging the validity of a study has the burden

[10] As discussed below, we are vacating the denial of benefits based on the ALJ's error in weighing all relevant evidence. Thus it is necessary to address Employer's cross-appeal.

[11] The November 5, 2019 study did not contain post-bronchodilator testing. MC Director's Exhibits 14 at 3; 30 at 2.

[12] We affirm the ALJ's findings discrediting the December 5, 1988, October 6, 2016, and November 5, 2019 studies because no party challenges them. *See Skrack*, 6 BLR at 1-711; MC Decision and Order at 31-32.

to establish the results are suspect or unreliable. *See Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984). If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b).

The technician who conducted the March 4, 2020 study indicated the Miner had good cooperation and understanding, and Dr. Ammisetty opined the study demonstrates the Miner was totally disabled. MC Director's Exhibit 21 at 5-6, 13. Dr. Gaziano reviewed the March 4, 2020 study and opined "the vents are acceptable." MC Director's Exhibit 27.

Dr. Zaldivar opined the March 4, 2020 study is invalid because there is "a great deal of hesitation in the flow/volume loop, as well as the appearance of the volume/time tracings, which means that this effort was not only inconsistent, but suboptimal." MC Employer's Exhibits 6 at 7; 10 at 51-52, 59. He further testified that "when you look at all the different tracings, you can see that they are different from each other," showing the Miner's effort was different in each trial, and they "cannot be used for anything." MC Employer's Exhibit 10 at 52. Similarly, Dr. Spagnolo opined that the March 4, 2020 study is invalid due to excessive variation in the FVC and FEV1 trials and incomplete flow volume loops. MC Employer's Exhibits 7 at 4, 13; 11 at 28-29. In addition, Drs. Zaldivar and Spagnolo both opined the study must be invalid because the Miner's blood gas studies were normal. MC Employer's Exhibits 6 at 7, 9; 7 at 14; 10 at 55-56; 11 at 30-31, 36.

The ALJ summarized this evidence. MC Decision and Order at 31. After noting the Miner's good effort and cooperation and Dr. Gaziano's validation, the ALJ summarily found the opinions of Drs. Zaldivar and Spagnolo are insufficient to invalidate the test. *Id*. Thus he found the study is valid. *Id*.

We are unable to affirm this finding as the ALJ has not adequately explained his basis for resolving the conflict in the evidence or set forth why the opinions of Drs. Zaldivar and Spagnolo are insufficient to invalidate the March 4, 2020 study.[13] Because the ALJ's

[13] The ALJ acknowledged Dr. Ammisetty did not rely on the highest values produced during the March 4, 2020 study to diagnose total disability, but found this error is insufficient to invalidate the testing because the highest values are still qualifying. MC Decision and Order at 31. The ALJ did not explain how this finding affects the weight of the medical opinions relevant to the validity of the study. To the extent he intended to resolve the conflict in the evidence on this basis, whether Dr. Ammisetty relied on the correct values relates to whether the study is qualifying, not whether it was conducted in conformance with the quality standards and is sufficiently reliable. 20 C.F.R. Part 718, App. B; *see Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984).

finding does not satisfy the explanatory requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), we vacate the determination that the March 4, 2020 study is valid.[14] *See Director, OWCP v. Rowe*, 710 F.2d 251, 254-55 (6th Cir. 1983); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Consequently, we vacate the ALJ's finding the pulmonary function study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). MC Decision and Order at 31-32.

Claimant's Appeal

Claimant and the Director argue the ALJ erred in finding the evidence does not establish total disability based on his consideration of all relevant evidence. Claimant's Brief at 4-5; Director's Reply at 2-3. Their argument has merit.

The ALJ found the pulmonary function study evidence supports total disability (a finding we have vacated above) and none of the medical opinions (whether finding the Miner did or did not have a total disability) are credible. MC Decision and Order at 32-34. Specifically, the ALJ found Dr. Ammisetty's opinion diagnosing total disability and the opinions of Drs. Zaldivar and Spagnolo excluding total disability not credible because they are inadequately reasoned.[15] MC Decision and Order at 33. Ultimately, he determined Claimant failed to establish total disability based on all relevant evidence. *Id*.

This was error. Pulmonary function studies and blood gas studies measure different types of impairments, and the non-qualifying blood gas studies, even if they do not support total disability, do not necessarily call into question the pulmonary function studies. *See Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984). Thus if the

[14] The Administrative Procedure Act, 5 U.S.C. §§500-591, requires every adjudicatory decision 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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[15] The ALJ found their opinions unpersuasive based on his finding as to the pulmonary function tests, which we have vacated. MC Decision and Order at 33. Consequently, we also vacate that determination. However, we note that, in weighing the evidence as a whole, the ALJ considered the medical opinion evidence as weighing against finding total disability even though he had discredited it. On its face, this was an inconsistent treatment of the evidence. On remand, the ALJ must apply consistent analysis and provide adequate explanations for his determinations.

qualifying March 4, 2020 study is valid and entitled to controlling weight, Claimant may be able to establish total disability when weighing all like and unlike evidence as a whole.

Based on the foregoing errors, we vacate the ALJ's finding Claimant failed to establish total disability and did not invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.204(b); MC Decision and Order at 34. We further vacate his finding Claimant failed to establish a change in an applicable condition of entitlement as well as the denial of benefits. 20 C.F.R. §725.309(c); MC Decision and Order at 45.

Survivor's Claim

Regarding the survivor's claim, the ALJ applied the same reasoning and made the same findings on total disability as he did in the miner's claim. SC Decision and Order at 22-24. Thus, for the same reasons we vacated the ALJ's finding Claimant did not establish total disability in the miner's claim, we also vacate his finding Claimant did not establish total disability in the survivor's claim, as well as the denial of benefits.[16]

Remand Instructions

On remand, the ALJ must reconsider whether the pulmonary function study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). Specifically, the ALJ initially must reweigh whether the March 4, 2020 pulmonary function study is valid and reliable. As discussed, he must address all relevant evidence, including the opinions of Drs. Ammisetty, Gaziano, Zaldivar, and Spagnolo to the extent they address the reliability of the study and must resolve any conflicts in the evidence.

Similarly, the ALJ must then reconsider the medical opinion evidence, taking into account his findings regarding the pulmonary function study evidence. He must resolve the conflict in the medical opinion evidence by addressing the physicians' comparative credentials, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Tennessee Consolidated Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Rowe*, 710 F.2d at 254-55. If Claimant would establish total disability based on the pulmonary function study evidence or medical opinion evidence, considered in isolation, the ALJ must then determine whether she has established total disability based on consideration of the evidence as a whole. *See* 20 C.F.R. §718.204(b)(2); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock*, 9 BLR at 1-198. In making his determinations, he must

[16] Consequently, we decline to address, as premature, Claimant's argument that the ALJ erred in finding she did not establish pneumoconiosis. Claimant's Brief at 6; *see also* Director's Letter Brief at 3.

set forth his findings in detail and explain his rationale in accordance with the APA's requirements. *Wojtowicz*, 12 BLR at 1-165.

If Claimant satisfies her burden to establish total disability, she will establish a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c), and will invoke the Section 411(c)(4) presumption. Then, the ALJ would need to address whether Employer has rebutted it. 20 C.F.R. §718.305. If Claimant fails to establish total disability, an essential element of entitlement, the ALJ must deny benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

Accordingly, the ALJ's Decisions and Orders Denying Benefits in the miner's claim and the survivor's claim are affirmed in part and vacated in part, and the cases are remanded for further consideration consistent with this opinion.[17]

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

ROLFE, Administrative Appeals Judge, concurring:

I concur with my colleagues' decision to remand this case to determine the validity of the March 4, 2020 pulmonary function study. I write separately, however, to emphasize my view that if after considering all the relevant evidence regarding its legitimacy the ALJ

[17] Our colleague ignores the broad discretion afforded the ALJ as the finder of fact in weighing the evidence, drawing inferences, and reaching conclusions. *See Director, OWCP v. Rowe*, 710 F.2d 251, 254-55 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR-1-149, 1-155 (1989) (en banc). Notably, on remand, the ALJ, for example, retains the discretion to reweigh the various studies, as well as to reconsider his analysis of the medical opinions and the evidence as a whole. Therefore, in the event the ALJ finds the study valid, he is not compelled, as our colleague suggests, to conclude that disability is established.

on remand once again finds the study valid, he must find the Miner was disabled as a matter of law under his current rationale.

Because the March 4, 2020 study showed a worsening of the Miner's condition in relation to the October 6, 2016 study, and because it was performed approximately three and half years after the most recent non-qualifying study, the ALJ permissibly found it controlling based on its recency given the progressive nature of pneumoconiosis. *See Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993); *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-52-53 n.14 (2023) ("[A] factfinder may, consistent with the progressive nature of pneumoconiosis, credit newer evidence showing a deterioration in a miner's condition over older evidence based on chronological order[.]"); *see also Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992) (because pneumoconiosis is a latent and progressive disease, more recent evidence may be rationally credited if it shows a miner's condition has worsened); *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 718 (4th Cir. 1993) (irrational to credit evidence for being more recent where the time between the evidence is only a matter of days).

Moreover, assuming the validity of the study, the ALJ will have acted within his discretion in discrediting the disability opinions of Drs. Zaldivar and Spagnolo given their contrary opinions on the matter. *Furgerson v. Jericol mining Inc.*, 22 BLR 1-216, 1-226 (2002) (en banc) (reliability of a physician's opinion may be "called into question" when the diagnostic tests upon which the physician based his diagnosis have been undermined); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); *see also Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP*, 710 F.2d 251, 255 (6th Cir. 1983); MC Decision and Order at 33.

In that case, the ALJ will once again have found the pulmonary function tests establish disability, the blood gas tests do not, and the medical opinion evidence is not credible. The qualifying pulmonary function tests thus remain unopposed -- indisputably satisfying Claimant's burden to establish total disability. 20 C.F.R. §718.204(b)(2)(i).

That conclusion inarguably follows because the regulations plainly state that "In the absence of contrary probative evidence," qualifying evidence in any of the four categories "shall establish a miner's total disability[.]" 20 C.F.R. §718.204(b)(2). And black letter law has long established that because pulmonary function and arterial blood gas tests measure different types of impairments, differing results of the two categories do not conflict.[18] *Tussey v. Island Creek Coal Co*., 982 F.2d 1036, 1040-41 (6th Cir.1993)

[18] While my colleagues contend my view ignores ALJ discretion in coming to this conclusion, tellingly absent from their contention is a reasonable explanation as to how. Without identifying anything wrong with the ALJ's prior rationale, my colleagues suggest

(although non-qualifying blood gas study evidence is probative, "it cannot be seen as being a direct offset or 'contrary' to the findings of the pulmonary function evidence"); *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 210 n.8 (4th Cir. 2000); *Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984); *see also Hoskins v. Big Elk Creek Coal Co., Inc.*, BRB No. 23-0056 BLA, 2023 WL 8070923, at *6 (Oct. 16, 2023) (unpub.); *Conley v. Brush Creek Coal Co.*, BRB Nos. 21-0446 BLA and 21-0520 BLA, 2022 WL 9864398, at *9 (Sept. 13, 2022) (unpub.) (non-qualifying blood gas studies do not preclude the use of qualifying pulmonary function studies to establish total disability because the two tests measure different forms of impairment).

Claimant thus will have established a change in an applicable condition of entitlement based on the uncontradicted pulmonary function tests, 20 C.F.R. §725.309(c),

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he may spontaneously change his mind, reweigh the entire case, and come to the opposite conclusion on entitlement – all after confirming the only obstacle to affirmance supports disability. Even if he chose to try (for some unarticulated reason), I have my doubts such a tortured path could ever be reasonable: in addition to finding some other unknown path to that destination, the ALJ would have to maneuver around his prior findings.

and will have invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4). The ALJ then would need to address whether Employer has rebutted it. 20 C.F.R. §718.305.[19]

JONATHAN ROLFE
Administrative Appeals Judge

[19] Notably, relevant to rebuttal, the Director correctly points out that Employer bears the burden of establishing the Miner did not suffer from coal workers' pneumoconiosis. 20 C.F.R. §718.305(d)(i). Since the ALJ found the autopsy evidence in equipoise, it is insufficient to rebut the presumption of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(i)(B). Additionally, the ALJ failed to reconcile a contradiction in Dr. Swedarsky's opinion. Although he concluded the slides do not show pneumoconiosis, he still diagnosed mild anthracosis. SC Employer's Exhibit 15 at 26. As the Director points out, the regulatory definition of pneumoconiosis includes anthracosis and does not exclude mild forms of the disease. 20 C.F.R. §718.201(a)(1). Finally, if the ALJ on remand once again discredits the medical opinions of Drs. Ammisetty, Zaldivar, and Spagnolo, Employer cannot rebut the presumption of legal pneumoconiosis. 20 C.F.R. §718.305(d)(i)(A). Employer would thus be forced to establish no part of the Miner's pneumoconiosis played any role in his disability to avoid liability. 20 C.F.R. §718.305(d)(ii).