BRB Nos. 13-0418 BLA
and 13-0429 BLA

BETTY VANDYKE (o/b/o and as Widow of MEMPHIS VANDYKE)	)	
Claimant-Respondent	)	
v.	)	
VANDYKE BROTHERS COAL COMPANY	)	DATE ISSUED: 04/18/2014
Employer-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Granting Request for Modification Reopening Prior Determination and Granting Living Miner Benefits and Survivor's Benefits of Kenneth A. Krantz, Administrative Law Judge, United States Department of Labor.

Nate D. Moore (Penn, Stuart & Eskridge), Bristol, Virginia/Tennessee, for employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order - Granting Request for Modification Reopening Prior Determination and Granting Living Miner Benefits and Survivor's Benefits (2009-BLA-5522 and 2009-BLA-5523) of Administrative Law Judge Kenneth A. Krantz rendered on a request for modification of the denial in a miner's subsequent

claim filed on May 29, 2001[1] and in a survivor's claim filed on February 16, 2007,[2] pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)(the Act).[3] The claims have been consolidated.

Regarding the miner's claim, the administrative law judge accepted the parties' stipulations that the miner worked in coal mine employment for at least thirty-six years, and was totally disabled. *See* 20 C.F.R. §718.204(b). Adjudicating the miner's claim pursuant to the provisions at 20 C.F.R. Parts 718 and 725,[4] the administrative law judge found that the evidence newly submitted in support of modification, considered in conjunction with the previously submitted evidence, established the existence of both clinical and legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Therefore, the administrative law judge found that a basis for modifying the denial in the miner's claim pursuant to 20 C.F.R. §725.310 was established, *i.e.*, a change in conditions. The administrative law judge further found that granting modification would render justice under the Act. Claimant's request for modification was, therefore, granted. The administrative law judge further found that claimant established that the miner's pneumoconiosis arose out of coal mine employment and that he was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §§718.203(b), 718.204(c). Accordingly, the administrative law judge awarded benefits in the miner's claim. Regarding the

[1] The miner's first claim for benefits, filed on September 24, 1985, was denied on February 11, 1998. Following a remand of the case by the United States Court of Appeals for the Fourth Circuit, a modification request, and various procedural delays, the denial was affirmed by the Board on March 3, 1999, because the miner failed to establish that he had pneumoconiosis and that he was disabled due to pneumoconiosis. Decision and Order at 1-2.

[2] Claimant is the widow of the miner, who died on January 11, 2007. Claimant is pursuing both the miner's claim and her own survivor's claim.

[3] Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005 that were pending on or after March 23, 2010. The amendments revived Section 411(c)(4), which provides a rebuttable presumption of total disability due to pneumoconiosis if at least fifteen years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4)(2012). They also revived Section 422(*l*), which provides that the survivor of a miner who was eligible to receive benefits at the time of his or her death is derivatively entitled to survivor's benefits. 30 U.S.C. §932(*l*)(2012).

[4] The administrative law judge properly found that the presumption at amended Section 411(c)(4) does not apply to the miner's claim, as it was filed before January 1, 2005. *See* 30 U.S.C. §921(c)(4) (2012); Decision and Order at 5.

survivor's claim, the administrative law judge found that claimant was derivatively entitled to receive survivor's benefits based on the award in the miner's claim.

On appeal, employer challenges the administrative law judge's findings that the existence of both clinical and legal pneumoconiosis were established and that claimant was entitled to modification of the denial in the miner's claim.[5] Employer also contends that the administrative law judge failed to comply with the requirements of 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), in rendering his decision. Claimant has not responded to employer's appeal. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response to employer's appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, rational, and 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 Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under Part 718 in the miner's claim, claimant must prove that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis was totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement.

Section 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §922, which is incorporated into the Act by 30 U.S.C. §932(a), and implemented by 20 C.F.R. §725.310, authorizes modification of an award or denial of benefits in a miner's claim, based on a change in conditions or a mistake in a determination of fact. In

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[5] The administrative law judge's findings at 20 C.F.R. §§718.203(b) and 718.204(c) are affirmed, as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[6] The Administrative Procedure Act requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the miner's coal mine employment was in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Decision and Order at 5; Director's Exhibit 5 at 1.

considering whether a change in conditions has been established, an administrative law judge is obligated to perform an independent assessment of the newly submitted evidence, in conjunction with the previously submitted evidence, to determine if the weight of the new evidence is sufficient to establish at least one element of entitlement that defeated an award in the prior decision. *See Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992). A claimant need not, however, allege specific error made by the administrative law judge in order to establish a basis for modification. Rather, the administrative law judge has broad discretion to correct mistakes of fact, including the ultimate fact of entitlement. *See Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230, 18 BLR 2-290, 2-996 (6th Cir. 1994). The administrative law judge is authorized "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971); *see King v. Jericol Mining, Inc*., 246 F.3d 822, 22 BLR 2-305 (6th Cir. 2001). The modification of a claim does not automatically flow from a finding that a mistake was made on an earlier determination, and should be made only where doing so will render justice under the Act. *See Westmoreland Coal Co. v. Sharpe*, 692 F.3d 317, 327-28, 25 BLR 2-157, 2-173-74 (4th Cir. 2012).

Clinical Pneumoconiosis

In determining that the miner had clinical pneumoconiosis, the administrative law judge found that, although the x-ray and medical opinion evidence did not establish the existence of clinical pneumoconiosis, the autopsy evidence did.[8] On weighing all of the relevant evidence together, and noting that autopsy evidence was the most reliable evidence, the administrative law judge concluded that the miner had clinical pneumoconiosis.

Employer contends, however, that the administrative law judge erred in finding that the miner had clinical pneumoconiosis because he mischaracterized the medical opinion of Dr. Fino and the autopsy slide review of Dr. Naeye. Regarding Dr. Fino's opinion, employer asserts that the administrative law judge erred in discounting Dr. Fino's opinion on the ground that the doctor relied "primarily on chest x-ray evidence" to find that the miner did not have clinical pneumoconiosis. Instead, employer contends that the administrative law judge should have credited the opinion of Dr. Fino because, in both his February 4, 2008 report and his December 1, 2009 deposition, he provided

[8] Specifically, the administrative law judge found that Dr. Abrenio, who performed the autopsy, found evidence of coal workers' pneumoconiosis. Decision and Order at 29; Director's Exhibit 82.

"extensive discussion regarding the absence of clinical pneumoconiosis in the miner's lungs beyond a discussion of the x-ray evidence." Employer's Brief at 9.

Contrary to employer's contention, however, Dr. Fino's report focused on the etiology of the miner's emphysema, not on the existence of clinical pneumoconiosis.[9] Similarly, the bulk of Dr. Fino's deposition testimony addressed the means by which Dr. Fino believed the effects of coal dust exposure from smoking may be differentiated and, to that end, discussed medical articles concerning correlating the amount of emphysema in a particular deceased miner to the amount of coal dust found pathologically. Employer's Exhibit 4 at 4-10. Dr. Fino concluded, based on the reduced FEV_1 values, pathology, and medical literature, that the miner had a cigarette smoking induced emphysema. *Id*. at 4. Thus, contrary to employer's contention, Dr. Fino's overall discussion pertained to an analysis of legal, not clinical, pneumoconiosis. Therefore, we reject employer's assertion that the administrative law judge mischaracterized the opinion of Dr. Fino. As the administrative law judge rationally concluded that the medical opinion evidence "is not particularly probative on the issue of clinical pneumoconiosis[,]" his determination to "primarily consider the other evidence when making a determination regarding clinical pneumoconiosis" was rational.[10] Decision and Order at 27.

Similarly, we find no merit to employer's argument that the administrative law judge mischaracterized the autopsy review of Dr. Naeye when he found that Dr. Naeye "did not address whether the autopsy slides demonstrated the existence of simple pneumoconiosis." Decision and Order at 17, 28-29; Employer's Brief at 10-11. Employer asserts that a proper reading of Dr. Naeye's report indicates that he "did not believe that [the miner] suffered from *any* interstitial lung disease, including pneumoconiosis." Employer's Brief at 10. Contrary to employer's assertion, however, the administrative law judge accurately found that Dr. Naeye did not evaluate whether the autopsy slides demonstrated *simple pneumoconiosis*. Rather, as the administrative law judge noted, Dr. Naeye only disagreed with Dr. Abrenio's autopsy report to the extent that Dr. Abrenio diagnosed complicated, in addition to simple, pneumoconiosis. Dr.

[9] Dr. Fino stated: "[T]he only quantification pathologically was provided by Dr. Naeye, when he said that no more than 2-3% of the lung contained coal pigment. This is quite consistent with the majority of chest x-ray readings, which show no evidence of coal workers' pneumoconiosis. In this case, there is insufficient coal mine dust retained in the lungs to account for any of this man's obstructive impairment or emphysema." Employer's Exhibit 4 at 14; *see* Employer's Brief at 9.

[10] As employer does not challenge the administrative law judge's finding that the opinions of Drs. Castle and Forehand were, likewise, "not particularly probative" on the issue of clinical pneumoconiosis, the finding is affirmed. *Skrack*, 6 BLR at 1-711; Decision and Order at 27.

Abrenio opined that the lesions of over one centimeter in diameter demonstrated the existence of complicated pneumoconiosis, while Dr. Naeye stated that a diagnosis of complicated pneumoconiosis could not be made based on lesions of less than two centimeters in diameter. Decision and Order at 28-29; Employer's Exhibit 6 at 1. Consequently, we reject employer's argument that the administrative law judge mischaracterized Dr. Naeye's autopsy report. Employer does not challenge the administrative law judge's finding that Dr. Abrenio's autopsy report established the existence of simple pneumoconiosis. Additionally, we note that the administrative law judge acted within his discretion in relying on the autopsy evidence, as most probative on the issue of clinical pneumoconiosis. Decision and Order at 15, 27-29; *see Griffith v. Director, OWCP*, 49 F.3d 184, 187 (6th Cir. 1995). As employer raises no further arguments regarding the administrative law judge's finding that the evidence established that the miner had clinical pneumoconiosis, this finding is affirmed.

Legal Pneumoconiosis

In finding that the miner had legal pneumoconiosis, the administrative law judge credited the opinion of Dr. Forehand on the issue, as he found that Dr. Forehand's opinion was well-documented and well-reasoned.[11] The administrative law judge rejected the contrary opinions of Drs. Castle and Fino because they conflicted with the definition of legal pneumoconiosis contained in the Act and regulations.[12]

Employer contends, however, that the administrative law judge erred in relying on the opinion of Dr. Forehand to find legal pneumoconiosis because Dr. Forehand did not

[11] Dr. Forehand, who performed the February 12, 2002 Department of Labor (DOL) - sponsored pulmonary examination, found the miner's respiratory impairment due to both coal dust exposure and cigarette smoking. Decision and Order at 8, 30-31, 38-39; Director's Exhibit 12 at 4, 13-14. In addition to his examination, Dr. Forehand conducted an x-ray and blood gas study and took the miner's medical history.

[12] Dr. Castle performed two pulmonary examinations, and diagnosed total respiratory disability due to chronic obstructive pulmonary disease from smoking, with bullous emphysema and bronchitis, and opined that the miner did not suffer from clinical or legal pneumoconiosis. Decision and Order at 8-11; Director's Exhibits 25, 28; Employer's Exhibit 5.

Dr. Fino reviewed the medical evidence, diagnosed a significant obstructive abnormality, emphysema and chronic obstructive bronchitis caused by smoking, and opined that the miner would have been just as disabled if he had never worked in coal mine employment. Decision and Order at 11-12, 14-15; Employer's Exhibits 3 at 14, 21, 4.

explain how the miner's coal mine dust exposure, in addition to his smoking history, contributed to his respiratory impairment. Employer also contends that the administrative law judge erred in rejecting Dr. Castle's contrary opinion, on the ground that it was based on the miner's negative x-ray evidence and an inaccurate smoking history.[13]

In crediting Dr. Forehand's opinion, the administrative law judge properly determined that it was "well-documented," as he "sufficiently set forth the clinical findings and data upon which he based his opinion." Decision and Order at 29. Additionally, the administrative law judge properly determined that Dr. Forehand's opinion was well-reasoned, as Dr. Forehand explained how the miner's smoking and coal mine employment histories,[14] as well as his test results and physical examination findings, supported his finding that the miner's respiratory impairment was due to both smoking and coal mine employment. Therefore, contrary to employer's contention, the administrative law judge reasonably found that Dr. Forehand's opinion supported a finding of legal pneumoconiosis. *Id*. at 38.

The determination of whether a medical report is documented and reasoned is committed to the discretion of the administrative law judge. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 536, 21 BLR 2-323, 2-341 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 440-41, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). As substantial evidence supports the administrative law judge's credibility determination with respect to the opinion of Dr. Forehand, it is affirmed. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

The administrative law judge discounted the opinion of Dr. Castle because the doctor relied on an inaccurate smoking history and expressed views on legal pneumoconiosis that were contrary to the Act and regulations. Regarding the miner's smoking history, the administrative law judge found that the evidence established that the miner began smoking in 1942, and stopped smoking in 1994. Decision and Order at 21. The administrative law judge further found, after considering all the evidence regarding the extent of the miner's smoking habit during this time,[15] that the miner smoked one

[13] As employer does not challenge the administrative law judge's decision to discount Dr. Fino's opinion on the issue of legal pneumoconiosis, it is affirmed. *Skrack*, 6 BLR at 1-711.

[14] Dr. Forehand opined that the miner had a 40-year history of coal mining, and a 67-year history of cigarette smoking. Decision and Order at 30; Director's Exhibit 12 at 4.

[15] The administrative law judge considered the miner's testimony that he did not smoke very much at first, although "he smoked almost two packs per day by the time he quit." Decision and Order at 5-6, 20; Director's Exhibit 62 at 24-25. The administrative

pack a day for much of this time, and only increased to two packs a day toward the end of this time. The administrative law judge therefore found that the miner had a 64 pack-year smoking history. *Id*. at 35. Thus, the administrative law judge concluded that Dr. Castle's opinion, that the miner's respiratory impairment was due to smoking alone, was based on an inaccurate assessment that the miner might have had a 96 to 98 pack-year smoking history. *Id*.

It is within the administrative law judge's discretion to assess the medical evidence and to draw his own inferences, *see Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 170, 21 BLR 2-34, 2-47 (4th Cir. 1997); *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096, 17 BLR 2-123, 2-126 (4th Cir. 1993); the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Anderson*, 12 BLR at 1-113. In this case, the administrative law judge found that a determination of a 64 pack-year smoking history was "consistent with many of the medical report findings throughout the record." Decision and Order at 21. We conclude therefore that the administrative law judge properly found, based on his resolution of the conflicting evidence, that the miner had a 64 pack-year smoking history. *See Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 803-04, 21 BLR 2-302, 2-310-12 (4th Cir. 1998). As substantial evidence supports the administrative law judge's inferences relevant to the miner's smoking history, they are affirmed. *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763, 21 BLR 2-587, 2-605 (4th Cir. 1999). We therefore affirm the administrative law judge's finding that the miner had a 64 pack-year smoking history and reject employer's arguments to the contrary. Further, in light of the administrative law judge's finding regarding the miner's smoking history, we conclude that he permissibly discounted Dr. Castle's opinion as it was based on an inaccurate smoking history. *Trumbo v. Reading Anthracite Coal Co.*, 17 BLR 1-89 (1993); *see Hicks*, 138 F.3d at 536, 21 BLR at 2-341; *Akers*, 131 F.3d at 440-41, 21 BLR at 2-275-76.

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law judge observed that "the early reports" recorded two packs per day, and that examining physician Dr. Robinette recorded variously "two packs per day on a regular basis," and "at least 1 to 2 packs of cigarettes per day." Decision and Order at 17-18, 21. However, the administrative law judge noted that Dr. Robinette recorded a 60 pack-year smoking history in office notes in 1993 and 1994, thus "indicating that he did not believe that [the miner] smoked two packs per day for the entire period." *Id*. The administrative law judge also noted Dr. Ahmed's history of one pack of cigarettes a day for fifteen years. Lastly, the administrative law judge considered Dr. Castle's calculation that the miner's smoking history was "in excess of 46 years," and the miner's statement to Dr. Castle that at some point "he progressed from one to two packs per day." *Id*. at 9, 13; Director's Exhibits 28 at 3, 45 at 21.

Further, contrary to employer's argument, the administrative law judge properly discounted Dr. Castle's opinion because it was based on views contrary to the Act and regulations. Specifically, the administrative law judge discounted Dr. Castle's opinion that the miner did not have legal pneumoconiosis, because Dr. Castle based his opinion, in part, on his belief that the miner's x-ray evidence did not support a finding of clinical pneumoconiosis. Decision and Order at 35-36. An opinion that rules out coal dust exposure as a causative factor for a miner's respiratory impairment based on x-ray evidence may be rejected as inconsistent with the Act and regulations concerning the definition of legal pneumoconiosis. Decision and Order at 35; s*ee Obush*, 650 F.3d at 248, 24 BLR at 2-369. Based on the foregoing, we conclude that, contrary to employer's contention, the administrative law judge explained, in accordance with the APA, why he gave less weight to Dr. Castle's opinion. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Because the administrative law judge rationally resolved the conflicting medical evidence, and permissibly assigned greatest probative weight to Dr. Forehand's opinion, we affirm his determination that the miner suffered from legal pneumoconiosis pursuant to Section 718.202(a)(4). Decision and Order at 36. Further, on weighing all of the relevant evidence together pursuant to Section 718.202(a), evidence relating to the existence of both clinical and legal pneumoconiosis, the administrative law judge properly found that the existence of both clinical and legal pneumoconiosis were established. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

Modification

In granting the request for modification on the miner's claim, the administrative law judge found, after considering the evidence submitted on modification in conjunction with the earlier evidence, that the evidence established that the miner suffered from pneumoconiosis. The administrative law judge therefore found that a change in conditions, a proper basis for modification, was established pursuant to Section 725.310. The administrative law judge further found that granting claimant's request for modification would render justice under the Act. Decision and Order at 19-20.

Employer contends, however, that the administrative law judge erred in granting modification based on his consideration of all the evidence of record, instead of the evidence submitted on modification alone. Specifically, employer contends that the administrative law judge's decision to grant claimant's request for modification was based, not on new evidence, but on evidence that had been previously considered.

In fact, however, the administrative law judge properly found the existence of pneumoconiosis established based on the 2007 autopsy evidence submitted with the modification request. *Id*. at 29. Considering this evidence, in conjunction with the evidence submitted prior to modification, the administrative law judge properly found that the existence of pneumoconiosis was now established. 20 C.F.R. §725.310;

Nataloni, 17 BLR at 1-84. Accordingly, we reject employer's contention that the administrative law judge did not properly consider the evidence in determining that it established a change in conditions pursuant to Section 725.310.[16]

We also reject employer's contention that the administrative law judge failed to consider whether granting modification would render justice under the Act. To the contrary, the administrative law judge considered the relevant factors, and found that claimant "diligently presented new and important evidence" in support of her request for modification of the denial of the miner's claim. Decision and Order at 20. The administrative law judge further concluded that, as benefits could be awarded on the miner's claim, seeking modification [was] not futile. *Id*. Thus, the administrative law judge concluded that the motive, diligence and lack of futility factors favor granting modification. *Id*. at 19-20; *see Sharpe*, 692 F.3d at 327-28, 25 BLR at 2-173-74. In view of the administrative law judge's consideration of appropriate factors, we reject employer's assertion that he did not address the issue of whether granting modification was in the interest of justice. We further note that employer identifies no relevant factors which would militate against the administrative law judge's grant of modification. Because we discern no abuse of discretion in the administrative law judge's determinations, that claimant established a ground for modification pursuant to Section 725.310 and that granting modification would render justice under the Act, they are affirmed. *See Branham v. BethEnergy Mines*, 20 BLR 1-27, 1-34 (1996). As the administrative law judge's findings and conclusions are rational and comport with the requirements of the APA, we affirm his award of benefits in the miner's claim. Further, based on the administrative law judge's award of benefits in the miner's claim, we affirm the administrative law judge's finding that claimant was derivatively entitled to survivor's benefits, based on that award. We, therefore, affirm the administrative law judge's award of benefits in the survivor's claim. 30 U.S.C. §932(*l*)(2012).

[16] Further, in evaluating the evidence on modification, the administrative law judge observed that some of the evidence from the prior claim "dates back to as early as 1983, approximately eighteen years prior to the filing date of the current claim[,]" and is, thus, "significantly older that the evidence submitted in this claim[.]" Decision and Order at 22. Hence, the administrative law judge's assignment of greater weight to the evidence submitted in the current claim, as "most probative" of the miner's condition was rational, and is affirmed. *Id*. *Wilt v. Wolverine Mining Co*., 14 BLR 1-70 (1990); *Gillespie v. Badger Coal Co*., 7 BLR 1-839 (1985).

Accordingly, the administrative law judge's Decision and Order - Granting Request for Modification Reopening Prior Determination and Granting Living Miner Benefits and Survivor's Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge