U.S. Department of Labor

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

BRB Nos. 17-0432 BLA
and 17-0433 BLA

KITTY BACK (o/b/o and Widow of JIMMY D. BACK) Claimant-Petitioner v. LOCUST GROVE, INCORPORATED and KENTUCKY EMPLOYERS MUTUAL INSURANCE Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 06/27/2018 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jennifer Gee, Administrative Law Judge, United States Department of Labor.

Kitty Back, Cornettsville, Kentucky.

Paul E. Jones and Denise Hall Scarberry (Jones & Walters, PLLC), Pikeville, Kentucky for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals, without the assistance of counsel,[2] the Decision and Order Denying Benefits (2014-BLA-05748 and 2014-BLA-05749) of Administrative Law Judge Jennifer Gee rendered on claims filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on July 27, 2012, and a survivor's claim filed on April 9, 2013. The Board consolidated the appeals for purposes of decision only.

The administrative law judge credited the miner with nineteen years of surface coal mine employment based on the parties' stipulation, but found that he had fewer than fifteen years of employment in conditions substantially similar to those underground. Thus, the administrative law judge found that claimant did not invoke the rebuttable presumption of total disability due to pneumoconiosis in the miner's claim, or the rebuttable presumption of death due to pneumoconiosis in the survivor's claim, pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[3] Because there is no evidence of complicated pneumoconiosis in the record, the administrative law judge also found that the Section 411(c)(3) presumption is inapplicable to either claim.[4] 30 U.S.C. §921(c)(3) (2012).

[1] Claimant is the widow of the miner, who died on February 28, 2013. Director's Exhibit 92a. Claimant is pursuing the miner's claim, as well as her survivor's claim.

[2] Robin Napier, a Benefits Counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Ms. Napier is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co*., 19 BLR 1-88 (1995) (Order).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis, or that his death was due to pneumoconiosis, in cases where the claimant establishes fifteen or more years in underground coal mine employment or comparable surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[4] As the record contains no evidence of complicated pneumoconiosis, we affirm the administrative law judge's finding that claimant failed to invoke the irrebuttable presumption that the miner's total disability or death was due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Decision and Order at 17.

Addressing whether claimant established entitlement without the Section 411(c)(3) or Section 411(c)(4) presumptions, the administrative law judge found that the miner had clinical pneumoconiosis that arose out of his coal mine employment, but not legal pneumoconiosis.[5] 20 C.F.R. §§718.202(a), 718.203(b). She further found that the miner was not totally disabled pursuant to 20 C.F.R. §718.204(b)(2), and she denied benefits in the miner's claim. In the survivor's claim, the administrative law judge found that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205, and she denied benefits.

On appeal, claimant generally contends that the administrative law judge erred in denying benefits in both the miner's and survivor's claims. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief in these appeals.

In an appeal filed by a claimant without the assistance of counsel, the Board considers whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are 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 Associates, Inc.*, 380 U.S. 359 (1965).

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

The Miner's Claim

To invoke the Section 411(c)(4) presumption, claimant must establish that the miner had at least fifteen years of "employment in one or more underground coal mines," or at surface mines in conditions "substantially similar" to conditions in underground mines. 30 U.S.C. §921(c)(4). Conditions at a surface mine will be considered substantially similar to those in an underground mine if the miner was "regularly exposed to coal-mine dust while

[5] "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). "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).

[6] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as the miner's last coal mine employment was in Kentucky. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 4.

working there." 20 C.F.R. §718.305(b)(2). The administrative law judge accepted the parties' stipulation that the miner had nineteen years of surface coal mine employment. Decision and Order at 5. She found, however, that "the record includes almost no evidence of the conditions at the surface mines where [the miner] worked" and, therefore, claimant failed to establish that the miner was regularly exposed to coal mine dust during his employment. *Id*. at 6.

On his employment history form, the miner indicated that he had been exposed to "dust, gases, or fumes" in all of his surface coal mine work as a dozer and rock truck driver. Decision and Order at 6; Director's Exhibit 4. Although the miner died prior to the hearing, and was therefore unable to testify, claimant testified regarding the miner's employment conditions. She stated that he worked mainly as a dozer operator, but also drove a rock truck, and that when he came home from work he was "covered in coal dust [and] rock dust" and often smelled like diesel. Hearing Transcript at 14. The administrative law judge considered this testimony but found it insufficient because claimant "could not provide any details about [the miner's] work conditions, or his exposure to coal and rock dust while he was working, including whether the cab on his equipment was open or closed." Decision and Order at 5-6, *referencing* Hearing Transcript at 14.

In light of claimant's uncontradicted testimony that the miner was "covered" in coal dust when he came home from work, we are unable to discern the relevance of whether the miner worked in an open or closed cab or why the administrative law judge found that claimant failed to establish that the miner was regularly exposed to coal mine dust at his surface mine employment. *See Zurich American Insurance Group v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018) ("a claimant's dust exposure evidence will be inherently anecdotal" because claimants "generally do not control . . . technical information about the mines in which the miner worked" (*quoting* 78 Fed. Reg. at 59,105 (Sept. 25, 2013)); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Moreover, the record contains a March 26, 2014 report from Dr. Collins, the miner's treating physician, stating that the miner operated heavy equipment and "was exposed to massive amount of dust daily" and "worked around excessive dust."[7] Director's Exhibit 103-18. The administrative law judge did not address this supporting evidence. *See* 30 U.S.C. §923(b) (the fact finder must address all relevant evidence); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant

[7] The treating physician questionnaire from Dr. Collins is summarized in, and attached to, the district director's Proposed Decision and Order. *See* Director's Exhibit 103-18. It was admitted into evidence, along with the other Director's Exhibits, at the July 12, 2016 hearing. Hearing Transcript at 8-9.

evidence requires remand). Because the administrative law judge did not adequately explain her finding as required by the Administrative Procedure Act (APA),[8] we must vacate her determination that claimant failed to establish that the miner was regularly exposed to coal mine dust in his surface coal mine employment, and remand the case for further consideration. *See* 30 U.S.C. §923(b); *Wojtowicz*, 12 BLR at 1-165; *McCune*, 6 BLR at 1-998.

We must also vacate the administrative law judge's finding that the miner was not totally disabled. A miner shall be considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a miner's disability shall be established by: pulmonary function studies, blood gas studies, evidence of cor pulmonale with right-sided congestive heart failure, or medical opinions. *See* 20 C.F.R. §718.204(b)(2)(i)-(iv).

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered pulmonary function studies conducted on October 2, 2012, November 1, 2012, and January 2, 2013. Decision and Order at 7-8, 16; Director's Exhibits 18, 20; Miner's Claim (MC) Claimant's Exhibit 3. She correctly found that the October 2, 2012 and November 1, 2012 studies produced non-qualifying values both before and after the administration of a bronchodilator, while the most recent test from January 2, 2013 produced qualifying[9] pre-bronchodilator values and did not include post-bronchodilator values.[10] Decision and Order at 7-8, 16; Director's Exhibits 18, 20; MC Claimant's Exhibit 3. She permissibly

[8] The Administrative Procedure Act provides that every adjudicatory decision must be accompanied by a statement of "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).

[9] A "qualifying" pulmonary function study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix B. A non-qualifying study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i).

[10] The administrative law judge permissibly averaged the heights reported in the miner's pulmonary function studies to obtain a height of 73.7 inches for claimant. *K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-44 (2008); *see Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 16. Because the miner's height falls between the table heights of 73.6 and 74.0 inches listed in 20 C.F.R. Part 718, Appendix B, the administrative law judge used the table values for the closest greater height of 74.0 inches to evaluate the studies. Decision and Order at 16.

declined to accord the January 2, 2013 test determinative weight, however, because "all three of the[ ] studies were done within three months of each other." Decision and Order at 16; *see Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740-41, 25 BLR 2-675, 2-687-88 (6th Cir. 2014) (affirming administrative law judge's finding that pulmonary function tests taken within a seven month period were equally probative in assessing the presence of a totally disabling respiratory impairment); *Aimone v. Morrison Knudson Co.*, 8 BLR 1-32, 1-34 (1985) (holding that it was proper to find that eight months is not a significant period of time separating objective evidence). Therefore, we affirm the administrative law judge's finding that the preponderance of the pulmonary function study evidence fails to establish a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 16.

Pursuant to 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge considered five arterial blood gas studies administered on October 2, 2012, November 1, 2012, January 10, 2013, January 13, 2013, and February 6, 2013, and found that only the January 13, 2013 test produced qualifying values.[11] Decision and Order at 8, 16; Director's Exhibits 18, 20, 93; MC Claimant's Exhibit 3. Noting that, as with the pulmonary function studies, all of the arterial blood gas studies were performed close in time, she permissibly found that the weight of the arterial blood gas study evidence failed to establish a totally disabling impairment pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 16. As substantial evidence supports this finding, it is affirmed.[12] *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005).

Because the record contains no evidence that the miner suffered from cor pulmonale with right-sided congestive heart failure, the administrative law judge correctly found that

[11] A "qualifying" blood gas study yields values that are equal to or less than the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those in the table. 20 C.F.R. §718.204(b)(2)(ii).

[12] A review of the January 13, 2013 study, which is included with treatment records from Dr. Alam, indicates that this study does not pertain to the miner, but to a different patient. *See* MC Claimant's Exhibit 3. Thus, none of the miner's arterial blood gas studies produced qualifying values. Although the administrative law judge erred in considering the January 13, 2013 study, the error is harmless as it does not affect her ultimate conclusion that the arterial blood gas study evidence does not establish total disability. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1985).

claimant cannot establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 16.

The administrative law judge next considered the medical opinions of Drs. Habre and Dahhan, as well as the miner's treatment records, pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge correctly found that Drs. Habre[13] and Dahhan[14] opined that the miner retained the ability to perform his usual coal mine work. Decision and Order at 16-17. The administrative law judge also stated that "[n]one of [the miner's] treating physicians indicated that he had a totally disabling respiratory impairment." *Id*. at 17. Therefore, she concluded that claimant failed to establish that the miner was totally disabled. *Id.*

We are unable to affirm the administrative law judge's conclusion. Although no treating physician explicitly opined that the miner was totally disabled from a respiratory standpoint, a physician need not phrase his or her opinion in terms of "total disability" to support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894, 13 BLR 2-348, 2-356 (7th Cir. 1990), *citing Black Diamond Coal Co. v. Benefits Review Board* [*Raines*], 758 F.2d 1532, 1534 (11th Cir. 1985) ("[i]t is not essential for a physician to state specifically that an individual is totally impaired . . . ."). In determining whether total disability has been established, an administrative law judge must consider not only medical opinions that are phrased in terms of total disability, but those that provide a medical assessment of exertional limitations which may support the conclusion that the miner was totally disabled by a respiratory impairment. *See Poole*, 897 F.2d at 894, 13 BLR at 2-356.

Here, Dr. Collins' treatment records reflect that on January 21, 2013 the miner was diagnosed with severe chronic obstructive pulmonary disease (COPD) and pneumonia, and

[13] Dr. Habre examined the miner on October 2, 2012 on behalf of the Department of Labor. He stated that the miner's pulmonary function studies demonstrated a moderate restriction and that his resting and exercise blood gas studies were normal. Director's Exhibit 18. Dr. Habre concluded that "[t]his usually did not indicate the presence of complete and total disabling lung disease" and concluded that the miner retained the ability to perform his usual coal mine work. *Id.*

[14] Dr. Dahhan examined the miner on November 1, 2012. Dr. Dahhan diagnosed a mild obstructive ventilatory impairment, based on pulmonary function studies. Director's Exhibit 20. He concluded that from a functional respiratory standpoint, the miner had no evidence of total or permanent disability and retained the physiological capacity to perform his usual coal mine work. *Id.*

although placed on nasal oxygen, he "continued to be very short of breath especially on exertion." Director's Exhibit 93-19. On February 6, 2013, Dr. Collins noted that the miner was "in moderate respiratory distress," and on February 8, 2013 he noted that when the miner "ambulated [forty] feet . . . [h]is O2 saturation dropped to 79% and he became very, very short of breath. His SpO2 was 81% on room air resting which qualified him for home oxygen." Director's Exhibit 93-5, 93-8. Also, in his March 26, 2014 report, Dr. Collins noted that the miner's COPD contributed to his "disability." Director's Exhibit 103-18. This evidence is relevant to the issue of total disability.[15]

As the administrative law judge did not address this evidence and explain what weight she accorded it, her finding contravenes the requirements of the APA. 30 U.S.C. §923(b); *Wojtowicz*, 12 BLR at 1-165; *McCune*, 6 BLR at 1-998. We therefore vacate the administrative law judge's finding that the medical opinion evidence does not establish total disability at 20 C.F.R. §718.204(b)(2)(iv) and her overall finding that total disability was not established at 20 C.F.R §718.204(b)(2), and remand for further consideration.

Because we have vacated the administrative law judge's findings that claimant did not establish fifteen years of qualifying coal mine employment and total disability pursuant to 20 C.F.R. §718.204(b), we must also vacate her finding that claimant did not invoke the Section 411(c)(4) presumption in the miner's claim. Based on these determinations, we must further vacate the denial of benefits in the miner's claim.

The Survivor's Claim

Because claimant did not establish that the miner had fifteen years of qualifying coal mine employment and a totally disabling respiratory impairment, the administrative law judge determined that claimant did not invoke the rebuttable presumption of death due to pneumoconiosis in the survivor's claim. 30 U.S.C. §921(c)(4). As we have vacated the administrative law judge's findings, we must also vacate her finding that claimant cannot invoke the Section 411(c)(4) presumption in the survivor's claim.

[15] Further, we note that while Drs. Habre and Dahhan opined in 2012 that the miner was not disabled, they did not have the opportunity to review the January 2, 2013 valid, qualifying pulmonary function study or Dr. Collins' 2013 treatment records. Director's Exhibits 18, 20; MC Claimant's Exhibit 3.

Entitlement Under 20 C.F.R. Part 718

In the interest of judicial economy, we address the administrative law judge's findings relevant to whether claimant established entitlement without the benefit of the Section 411(c)(4) presumption.

The Miner's Claim

If claimant fails to establish entitlement under Section 411(c)(4) in the miner's claim, she must establish: the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the total disability was due to pneumoconiosis. 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. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Here, the administrative law judge found that the x-ray, autopsy, and medical opinion evidence establishes that the miner had clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (2), (4),[16] but did not establish legal pneumoconiosis. A finding of clinical pneumoconiosis, *see* 20 C.F.R. §718.201(a)(1), is sufficient to support a finding of pneumoconiosis at 20 C.F.R. §718.202. We address the administrative law judge's findings on the issue of legal pneumoconiosis, however, as the existence of legal pneumoconiosis may be relevant to the issue of disability causation in the miner's claim and death causation in the survivor's claim.

Legal pneumoconiosis includes any chronic pulmonary disease or respiratory or pulmonary impairment that is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2), (b). The administrative law judge considered the medical opinion of Dr. Habre, together with the miner's medical treatment records.[17] In a report dated October 2, 2012, Dr. Habre diagnosed the miner with legal pneumoconiosis in the form of chronic bronchitis with a moderate restrictive impairment due to both coal mine dust exposure and cigarette smoking. Director's Exhibit 18. She found Dr. Habre's diagnosis of legal pneumoconiosis to be not well reasoned or

[16] Because claimant did not invoke the Section 411(c)(3) or Section 411(c)(4) presumptions, claimant could not establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(3).

[17] The administrative law judge also considered, and discredited, Dr. Dahhan's opinion that the miner did not have legal pneumoconiosis. Decision and Order at 15; Director's Exhibit 20.

supported because he did not explain how he determined that the miner's chronic bronchitis with moderate restriction was "caused, at least in significant part, by his history of coal mine dust exposure" or "point to any objective finding to support his diagnosis." Decision and Order at 15.

Dr. Habre stated that he diagnosed chronic bronchitis based on the presence of respiratory symptoms of cough, wheezing, shortness of breath, and the use of a bronchodilator. Director's Exhibit 18 at 30. He diagnosed a moderate restrictive impairment based on the results of the pulmonary function study he performed. *Id.* He opined that the miner had "dual etiology" for these conditions, based on his thirty-one years of cigarette smoking and twenty-two years of coal mine dust exposure: "Both [cigarette smoking and coal mine dust exposure], similarly but independently cause the presence of increased airway secretion, bronchoconstriction, and worsening respiratory symptoms. So the basic diagnosis is legal pneumoconiosis an entity, which [arose] from coal mine dust exposure and cause[d] the presence of respiratory symptoms as well as [led] to the decline in spirometric parameter." *Id.*

A physician need not apportion a specific percentage of a miner's lung disease to cigarette smoke versus coal mine dust exposure to establish the existence of legal pneumoconiosis, provided that the physician has credibly diagnosed a chronic respiratory or pulmonary impairment that is "significantly related to, or substantially aggravated by dust exposure in coal mine employment." 20 C.F.R. §718.201(b); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576-77, 22 BLR 2-107, 2-121-22 (6th Cir. 2000) (because coal dust need not be the sole cause of the miner's respiratory or pulmonary impairment, legal pneumoconiosis can be proven based on a physician's opinion that coal dust and smoking were both causal factors and that it was impossible to allocate between them). The United States Court of Appeals for the Sixth Circuit has held that a claimant can satisfy this burden by showing that coal dust exposure contributed "at least in part" to the miner's respiratory or pulmonary impairment. *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99, 25 BLR 2-615, 2-618 (6th Cir. 2014), *citing Southard v. v. Director, OWCP*, 732 F.2d 66, 72, 6 BLR 2-26, 2-35 (6th Cir. 1984).

As set forth above, Dr. Habre stated that the miner's chronic bronchitis with moderate restrictive impairment had a dual etiology based on his exposure history, and he explained the mechanism by which both smoking and coal mine dust contributed to his impairment. Director's Exhibit 18. Thus, we are unable to discern the basis for the administrative law judge's finding that Dr. Habre's conclusion that the miner had legal pneumoconiosis is not well reasoned. Further, as Dr. Habre stated that his diagnosis of legal pneumoconiosis was based, in part, on the results of the miner's October 2, 2012 pulmonary function study, substantial evidence does not support the administrative law

judge's finding that Dr. Habre did not point to any objective evidence to support his opinion. *Id.*

The administrative law judge also considered the miner's treatment records, and found that while they include diagnoses of COPD, chronic bronchitis, emphysema, asthma, and shortness of breath, they do not relate these conditions to coal mine dust exposure or his occupation as a miner. Decision and Order at 16. Contrary to the administrative law judges' characterization, in his March 26, 2014 report Dr. Collins, the miner's treating physician, explicitly diagnosed legal pneumoconiosis based on the miner's history of coal mine employment. Director's Exhibit 103-18.

As the administrative law judge failed to address relevant evidence and adequately explain her findings in accordance with the requirements of the APA, we must vacate her finding that the medical opinion evidence does not establish the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), and remand this case for further consideration of this issue. *See* 30 U.S.C. §923(b); *Wojtowicz*, 12 BLR at 1-165; *McCune*, 6 BLR at 1-998.

The Survivor's Claim

In a survivor's claim, where entitlement is not established based on the Section 411(c)(3) or 411(c)(4) presumptions, claimant must establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that his death was caused by complications of pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205. Pneumoconiosis is a substantially contributing cause of death "if it hastens the miner's death." 20 C.F.R. §718.205(b)(6). Before any finding of entitlement can be made in a survivor's claim, however, a claimant must establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88 (1993).

As set forth above, the administrative law judge found that claimant established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a) based on the x-ray, autopsy, and medical opinion evidence. Decision and Order at 14-16. Turning to whether the miner's death was due to clinical pneumoconiosis, the administrative law judge found that there was "no medical evidence in the record to support such a finding." *Id*. at 17. The administrative law judge correctly noted that Dr. Caffrey was the only physician to offer an opinion regarding the role of the miner's clinical pneumoconiosis in his death. *Id.* Dr. Caffrey concluded that the minimal degree of clinical pneumoconiosis observed on the miner's autopsy slides would not have caused, contributed to, or hastened the miner's death. Decision and Order at 17, *referencing* Director's Exhibit 94-5. Therefore, the administrative law judge concluded that the evidence failed to establish that the miner's

death was due to clinical pneumoconiosis. Decision and Order at 17. As this finding is supported by substantial evidence, it is affirmed. *See Martin*, 400 F.3d at 305, 23 BLR at 2-283.

Having found that claimant did not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge did not address whether claimant established that the miner's death was due to legal pneumoconiosis. As we have vacated the administrative law judge's finding relevant to the existence of legal pneumoconiosis, we must also vacate her determination that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205.[18]

Remand Instructions

The Miner's Claim

The administrative law judge must reconsider whether claimant established total disability and the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §§718.305, 718.204(b); *see Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), aff'd on recon., 9 BLR 1-236 (1987) (en banc). If invoked, the administrative law judge must consider whether employer has rebutted the presumption by establishing that the miner had neither legal nor clinical pneumoconiosis, or that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii); *see Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 25 BLR 2-1 (6th Cir. 2011); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-159 (2015) (Boggs, J., concurring & dissenting).

If the administrative law judge finds that the miner was totally disabled but did not have fifteen years of qualifying coal mine employment, claimant is not entitled to the Section 411(c)(4) presumption. In that case, the administrative law judge must reconsider whether claimant established entitlement under Part 718, without the benefit of the presumption. Relevant to this inquiry, the administrative law judge must revisit whether

[18] If legal pneumoconiosis is established, the record contains evidence that could support a finding that legal pneumoconiosis contributed to the miner's death. The miner's treating physician, Dr. Collins, diagnosed legal pneumoconiosis and indicated that it hastened his death because the miner's chronic obstructive pulmonary disease (COPD) "affected his cardiac disease and [thus] contributed to his . . . death." Director's Exhibit 103-18. The miner's death certificate also lists COPD as a significant condition contributing to death. Director's Exhibit 92a-1.

claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and then determine whether the miner's totally disabling impairment was due to clinical and/or legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c).[19]

Conversely, if the administrative law judge finds that the miner was not totally disabled, an essential element of entitlement, benefits are precluded in the miner's claim. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

The Survivor's Claim

If the administrative law judge awards benefits in the miner's claim pursuant to either Section 411(c)(4) or Part 718, claimant is derivatively entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012).[20] In that case, the administrative law judge need not separately consider claimant's entitlement in the survivor's claim.

If the administrative law judge finds that claimant is not entitled to benefits in the miner's claim, however, she must separately determine whether claimant is entitled to benefits in the survivor's claim. If claimant has established total disability and fifteen years of qualifying coal mine employment, she is entitled to the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis. In that case, the administrative law judge must determine whether employer has rebutted the presumption by establishing that the miner had neither legal nor clinical pneumoconiosis, or that "no part of [his] death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(i), (ii); *Copley v. Buffalo Mining Co.*, 25 BLR 1-81 (2012).

If claimant is not entitled to the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis, the administrative law judge must reconsider whether claimant established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Relevant to this inquiry, if the administrative law judge finds that legal

[19] Because the administrative law judge determined that the miner was not totally disabled, she did not render a finding on whether the miner's clinical pneumoconiosis caused a totally disabling impairment pursuant to 20 C.F.R. §718.204(c). Decision and Order at 17. Thus, if the administrative law judge finds that the miner was totally disabled, she must consider whether the miner's clinical pneumoconiosis caused his disability, regardless of whether legal pneumoconiosis is established.

[20] Under Section 422(*l*), the survivor of a miner who was eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2012).

pneumoconiosis is established pursuant to 20 C.F.R. §718.202(a)(4), she must reconsider whether the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).[21]

In making her findings on remand, the administrative law judge must consider all relevant evidence and explain her findings. *See* 30 U.S.C. §923(b); *Wojtowicz*, 12 BLR at 1-165; *McCune*, 6 BLR at 1-998.

Accordingly, the administrative law judge's Decision and Order Denying Benefits in both the miner's and survivor's claims is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

[21] If the administrative law judge finds that legal pneumoconiosis is not established, however, claimant is precluded from establishing that the miner's death was due to pneumoconiosis, in light of our affirmance of the finding that clinical pneumoconiosis did not cause his death.