U.S. Department of Labor

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

BRB Nos. 17-0471 BLA and 17-0472 BLA

TRACIE JEFFERSON (Executrix of the Estate of BRENDA S. JEFFERSON, Widow of and o/b/o WILLIE JEFFERSON)	)	
Claimant-Petitioner	)	
v.	)	
ZEIGLER COAL COMPANY	)	DATE ISSUED: 09/26/2018
and	)	
OLD REPUBLIC INSURANCE COMPANY	)	
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits in Living Miner's and Survivor's Claims of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Austin Vowels (Vowels Law PLC), Henderson, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant[1] appeals the Decision and Order Denying Benefits in Living Miner's and Survivor's Claims (2011-BLA-05932 and 2013-BLA-06100) of Administrative Law Judge Jonathan C. Calianos, rendered under the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a request for modification of the denial of the miner's subsequent claim, and a subsequent survivor's claim filed by the miner's widow.[2]

The administrative law judge accepted the parties' stipulation that the miner had thirty-three years of coal mine employment, with at least twenty-seven years spent in underground mines. The administrative law judge found that the new evidence submitted on modification was insufficient to establish that the miner had a totally disabling respiratory or pulmonary impairment. He also found that there was no mistake in a determination of fact by Administrative Law Judge Joseph Kane with regard to the prior

[1] The miner, Willie Jefferson, and his widow, Brenda Jefferson, are deceased. Their daughter, Tracie Jefferson (claimant) is pursuing their respective claims.

[2] The miner filed four claims during his lifetime. The first three claims were denied for failure to establish any element of entitlement. Living Miner Director's Exhibits (LMDX) 1-3. The miner's fourth claim, which is the subject of this appeal, was filed on July 28, 2006. LMDX 4. The district director awarded benefits in the miner's claim and employer requested a hearing. The miner subsequently died on March 15, 2008, while his claim was pending. LMDX 84. The miner's widow, Brenda Jefferson, filed a survivor's claim on April 8, 2008, which was denied by the district director on October 31, 2008. Widow Director's Exhibit (WDX) 1. The widow took no further action on the denial of her claim until filing a subsequent survivor's claim on August 20, 2010. WDX 5. On November 30, 2011, Administrative Law Judge Joseph E. Kane issued a Decision and Order denying benefits in the miner's claim, finding the evidence to be insufficient to establish both that the miner had pneumoconiosis and was totally disabled. LMDX 83. On January 17, 2012, the widow filed a request for modification of the denial of the miner's claim. LMDX 84. The widow died on March 9, 2016, while the miner's and her survivor's claims were pending before the Office of Administrative Law Judges. WDX 29. The claims were consolidated for a hearing held on June 8, 2016, before Administrative Law Judge Jonathon C. Calianos (the administrative law judge), whose Decision and Order denying benefits in both claims is the subject of the current appeal.

denial of the miner's claim for failure to establish total disability. As the prior evidence and newly submitted evidence on modification was insufficient to establish total disability, the administrative law judge determined that claimant was unable to invoke the rebuttable presumption that the miner was totally disabled due to pneumoconiosis under Section 411(c)(4).[3] Further, because the evidence did not establish total disability, a requisite element of entitlement, the administrative law judge found that entitlement to benefits was precluded in the miner's claim pursuant to 20 C.F.R. Part 718. Based on the denial of benefits in the miner's claim, the administrative law judge found that claimant was ineligible for derivative benefits in the subsequent survivor's claim pursuant to Section 932(*l*).[4] Accordingly, the administrative law judge denied benefits in both the miner's and the survivor's claims.

On appeal, with regard to the miner's claim, claimant argues that the administrative law judge erred by: finding no mistake in a determination of fact regarding whether the pulmonary function study evidence established total disability; rejecting the newly submitted medical opinion of Dr. Chavda regarding the validity of the pulmonary function study evidence; rejecting Dr. Chavda's opinion that the miner was totally disabled based on the pulmonary function studies and diffusion capacity evidence; failing to consider the lay testimony on the issue of total disability; and finding that the miner did not have pneumoconiosis. Additionally, claimant contends that the administrative law judge erred in finding that claimant is not entitled to derivative benefits in the subsequent survivor's claim. Employer responds, urging affirmance of the denial of benefits in both claims. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[5]

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[3] Under Section 411(c)(4) of the Act, there is a rebuttable presumption that a miner was totally disabled due to pneumoconiosis, if the miner had at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305.

[4] Under Section 422(*l*) of the Act, a survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2012); *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-200 (2010).

[5] We affirm, as unchallenged on appeal, the administrative law judge's finding that the miner had thirty-three years of coal mine employment, of which twenty-seven years were performed in underground mines. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The Miner's Claim

To be entitled to benefits under the Act, claimant must establish that the miner had pneumoconiosis, his pneumoconiosis arose out of coal mine employment, the miner had a totally disabling respiratory or pulmonary impairment, and 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. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

In considering whether to grant modification of the prior denial of the miner's subsequent claim,[7] the administrative law judge was required to determine whether the denial contained a mistake in a determination of fact or whether the evidence submitted on modification, along with the evidence previously submitted in this subsequent claim, was sufficient to establish a change in conditions, i.e., a change in an applicable condition of entitlement. 20 C.F.R. §§725.309(c), 725.310; *Hess v. Director, OWCP*, 21 BLR 1-141, 143 (1998).

I. Mistake in a Determination of Fact – Total Disability

The miner is considered to have been totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work. *See*

[6] Because the miner's coal mine employment was in Kentucky, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

[7] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim also must be denied unless the administrative law judge 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).

20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function testing, arterial blood gas studies, 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 administrative law judge must consider all of the relevant evidence and weigh the evidence supporting a finding of total disability against the contrary evidence. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-20-21 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987).

A. Pulmonary Function Studies

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge noted that there were no new pulmonary function studies submitted on modification to establish a change in condition. Decision and Order at 16. Thus, the administrative law judge considered whether there was a mistake in a determination of fact by Judge Kane in finding that the pulmonary function study evidence was insufficient to establish total disability. *Id*.

Judge Kane considered three pulmonary function studies. Dr. Simpao examined the miner on behalf of the Department of Labor (DOL) on August 24, 2006, and obtained a qualifying pulmonary function study.[8] Living Miner Director's Exhibit (LMDX) 17. Dr. Simpao indicated on the DOL report of ventilatory study (Form CM-2907) that the miner's degree of cooperation and ability to understand directions was "Good." *Id*. However, in the comments section of that same form, Dr. Simpao stated:

> Spirometry data is ACCEPTABLE and REPRODUCIBLE. . . . . Much coaching needed to obtain matches for FEV1 and FVC. [The miner] stated [he was] very tired and getting a [headache]. Allowed several rest periods. [The miner's] effort, cooperation and comprehension fair. Tolerated testing well.

Id.

On the same DOL report of ventilatory study under the heading "Interpretation," Dr. Simpao further stated:

[8] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

> Reduced vital capacity and flow volume curve. This test indicates a moderate degree of both restrictive and obstructive airway disease. However, the parameters are questionable which could affect test results.

Director's Exhibit 17.

Judge Kane determined that the August 24, 2006 study was invalid based on Dr. Simpao's "inconsistent" statements regarding claimant's effort and the notation regarding the "questionable" parameters of the study, which was not specifically explained by Dr. Simpao. November 30, 2011 Decision and Order at 16-17. Judge Kane concluded that claimant failed to establish total disability pursuant to 20 C.F.R. §718.202(b)(2)(i), as the two remaining studies, obtained by Dr. Repsher on October 24, 2006, and by Dr. Selby on February 15, 2007, were non-qualifying. *Id*.

The administrative law judge found that there was no mistake in a determination of fact by Judge Kane in weighing the pulmonary function evidence. He specifically agreed with Judge Kane's finding that the August 24, 2006 study was invalid. Decision and Order at 16. The administrative law judge also considered Dr. Chavda's opinion, submitted by claimant on modification to show a mistake in a determination of fact.[9] Claimant's Exhibit 4. The administrative law judge noted that "Dr. Chavda felt that Dr. Simpao's August [24], 2006 study was valid, because it was validated by Dr. Mettu, and the tracings showed 'reasonable' and 'pretty good' effort. Decision and Order at 16 *quoting* Employer's Exhibit 3. The administrative law judge stated that he rejected Dr. Chavda's opinion because "he did not discuss the contrary evaluation of this study by Drs. Simpao, Selby or Respher." Decision and Order at 16. Accordingly, the administrative law judge found that claimant did not establish a mistake in a determination of fact with respect to Judge's

[9] Dr. Chavda completed a questionnaire on March 20, 2016, based on his review of the treatment records and evidence submitted by the parties. Claimant's Exhibit 4. He noted that claimant's August 24, 2006 pulmonary function study was validated by Dr. Mettu and opined that the miner was totally disabled based on that study. *Id*. Dr. Chavda also testified by deposition on May 6, 2016. Employer's Exhibit 3. Looking at a "condensed version" of the tracings for the August 24, 2006 study, Dr. Chavda stated that when you look at trial one from the time volume curve, "his effort, you know reasonably looks good. . . . he's blowing up to eight seconds, and . . . I think his effort is pretty good for all eight seconds." *Id*. at 20. Dr. Chavda later described that if you looked at the flow volume loop for trial number one the cooperation and comprehension was "not very good - But if you look at the trial number[s] 3, 4, 6 and 8, I think he had nice flow volume loop, and those trial[s] look[] pretty good." *Id*. at 21.

Kane's finding that the pulmonary function study evidence failed to establish total disability. *Id*.

Claimant asserts that the administrative law judge erred in not crediting Dr. Mettu's validation report because it was obtained by DOL and therefore is essential to the establishment of the complete pulmonary evaluation. Claimant also contends that, contrary to the administrative law judge's finding, Dr. Chavda provided a detailed analysis of the August 24, 2006 study, addressing Dr. Simpao's testimony, and generally addressing Dr. Selby's opinion.

We are unable to affirm the administrative law judge's finding of no mistake in a determination of fact because there are outstanding conflicts in the evidence that have not been properly resolved. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Judge Kane relied on Dr. Simpao's "inconsistent" statements to invalidate the August 24, 2006 study, but he did not explain the weight he accorded Dr. Mettu's validation report. In reviewing Judge Kane's findings, the administrative law judge also did not explain the weight he accorded Dr. Mettu's validation report. Moreover, the administrative law judge provided no explanation as to why he credited the opinions of Drs. Repsher and Selby over Dr. Chavda's opinion regarding the validity of the August 24, 2006 study. Because the administrative law judge has failed to explain the bases for his credibility findings in accordance with the Administrative Procedure Act (APA),[10] we vacate his conclusion that the pulmonary function study evidence is insufficient to establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(i).[11]

[10] The Administrative Procedure Act, 5 U.S.C. §§500-591, 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).

[11] We reject claimant's assertion that the October 24, 2006 and February 15, 2007 non-qualifying pulmonary function studies are not reliable because those studies were reported by Drs. Repsher and Selby as showing poor effort by the miner. *See Anderson v. Youghiogheny & Ohio Coal Co.*, 7 BLR 1-152, 1-154 (1984) (a non-qualifying pulmonary function study that represents poor effort is still a valid measure of the lack of respiratory disability); *see also Crapp v. United States Steel Corp.*, 6 BLR 1-476, 1-479 (1983) (non-qualifying study is reliable despite the lack of a statement of cooperation and comprehension).

B. Medical Opinion Evidence

The administrative law judge found no mistake in a determination of fact with regard to Judge Kane's finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 17. The administrative law judge agreed with Judge Kane that Dr. Simpao's diagnosis of total disability was not well-reasoned to the extent that Dr. Simpao based his opinion on the invalid August 24, 2006 pulmonary function study. *Id*.

Additionally, the administrative law judge found flaws in Dr. Chavda's opinion that the miner was totally disabled:

> [Dr.] Chavda did not discuss the exertional requirements of [the miner's] last coal mine job, or offer any support for his claim that the "probably borderline" and "maybe not altogether totally disqualifying" FEV1 obtained by [Dr.] Repsher would [have] prevent[ed] [the miner] from performing that job. Nor did [Dr. Chavda] explain his claim that the DLCO [diffusion capacity measurement] obtained by [Dr.] Repsher would [have] prevent[ed] [the miner] from performing his most recent coal mine duties. I note that Dr. Repsher himself reported that this DLCO was "supranormal" when adjusted for alveolar volume, ruling out a clinically significant interstitial lung disease. Similarly, Dr. Selby concluded that [the miner's] DLCO was 109 [percent] of predicted and within normal limits.

Decision and Order at 18. The administrative law judge thus concluded that Dr. Chavda's opinion was "poorly reasoned, and not supported by the objective medical evidence." *Id*. The administrative law judge also noted that the treatment records submitted on modification did not include any assessment concerning the miner's respiratory condition. *Id*. at 18. Thus, the administrative law judge found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Weighing the evidence as a whole, the administrative law judge concluded that claimant did not establish that the miner had a totally disabling respiratory or pulmonary impairment and could not invoke the Section 411(c)(4) presumption. *Id*.

Because we have vacated the administrative law judge's finding that Dr. Simpao's pulmonary function study was invalid, we vacate the administrative law judge's finding that Dr. Simpao's diagnosis of total disability, based on that study, is not reliable. Furthermore, we agree with claimant that, contrary to the administrative law judge's determination, Dr. Chavda discussed the exertional requirements of the miner's last coal mine job. Dr. Chavda indicated that he was aware of the miner's usual coal mine work in his report and answered questions concerning the physical requirements of that work

during his deposition, describing it as "hard, manual labor." Employer's Exhibit 3 at 38, 40.

Furthermore, the administrative law judge did not resolve the conflict in the evidence regarding the interpretations of the DLCO evidence among Drs. Repsher, Selby and Chavda. Dr. Repsher's October 24, 2006 report lists a DLCO value of 57 percent and a DLCO/VA of 140 percent. LMDX 19. Although Dr. Repsher testified that the blood gas studies were "supranormal," the physician did not specifically address the significance, if any, of the DLCO value in considering whether the miner was totally disabled.[12] *Id*. Dr. Selby noted that the DLCO obtained during his examination was 8.9 or 47 percent of predicted and the DLCO/VA is 3.73 or 109% of predicted." LMDX 49. Dr. Selby stated that the "diffusion capacity is normal." *Id*. After reviewing the reports by Drs. Repsher and Selby, Dr. Chavda explained in his deposition that DLCO scores below 50% were indicative of a disabling loss in diffusing capacity of the lungs "under the highest class of disability" pursuant to the American Medical Association guidelines. Employer's Exhibit 3 at 36. We conclude that the administrative law judge did not adequately explain why he rejected Dr. Chavda's opinion or resolve the conflict in the evidence regarding the diffusion capacity evidence contained in the medical reports. *See Wojtowicz*, 12 BLR at 1-165. Thus, we vacate the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).[13]

[12] The administrative law judge misstated that Dr. Repsher referenced the diffusion capacity study as "supranormal." Decision and Order at 18. During his deposition Dr. Repsher was asked, "You also referred to the diffusion capacity, and you obtained an arterial blood gas study. What was your interpretation of that testing? A. The arterial blood gas [study] was actually supranormal, and the carboxyhemoglobin was normal at 0.1 percent." LMX 49.

[13] Claimant asserts that the administrative law judge erred in concluding that "the medical records do not include any assessments of [the miner's] capabilities." Decision and Order at 18. On remand, the administrative law judge should address claimant's assertion that the treatment records support a finding of total disability because those records document that the miner suffered from COPD and emphysema and that the miner was on oxygen.

C. Hearing Testimony

Claimant also contends that the administrative law judge failed to consider the miner's testimony at the 1998 and 2005 hearings,[14] or claimant's testimony at the 2016 hearing, in assessing whether the miner was totally disabled prior to his death.[15] Claimant argues that this testimony supports that the miner was totally disabled from performing his usual coal mine work prior to his death and that the administrative law judge erred in not considering it. Claimant's contentions have merit, only in part.

The regulations provide that "[st]atements made before death by a deceased miner about his or her physical condition are relevant and shall be considered in making a determination as to whether the miner was totally disabled at the time of death." 20 C.F.R. §718.204(d)(4). However, in the case of a living miner's claim "a finding of total disability due to pneumoconiosis shall not be made solely on the miner's statements or testimony." 20 C.F.R §718.204(d)(5). Further, "a determination of [total disability] shall not be based solely upon the affidavits or testimony of any person who would be eligible for benefits (including augmented benefits) if the claim were approved." 20 C.F.R. §718.204(d)(3). Therefore, while the lay testimony should be considered by the administrative law judge on remand, it may not serve as the sole basis upon which to find that the miner was totally disabled.

D. Conclusions/Remand Instructions

Because the administrative law judge's Decision and Order does not satisfy the APA, we vacate the denial of benefits and remand this case for reconsideration of whether claimant established total disability pursuant to 20 C.F.R. §718.204(b), invocation of the Section 411(c)(4) presumption and a basis for modification pursuant to 20 C.F.R. §725.310.

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[14] At the September 16, 1998 hearing, the miner testified about his physical symptoms, how he was not able to walk a block without resting and using his inhaler, and how he spent the majority of the day lying on the couch due to shortness of breath. LMDX 1 (1998 Hearing Transcript at 11-20). At the January 25, 2005 hearing, the miner testified concerning the working conditions in his coal mine employment and his respiratory health. LMDX 3 (2005 Hearing Transcript at 17-30).

[15] Claimant testified concerning the miner's physical limitations due to shortness of breath and coughing. Hearing Transcript at 24-34.

On remand, the administrative law judge must resolve the conflict in the evidence regarding the validity of the August 24, 2006 pulmonary function study and determine whether the pulmonary function study evidence is sufficient to establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(i). The administrative law judge must also reconsider the medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge must identify the exertional requirements of the miner's usual coal mine employment on remand and must also reconsider whether Dr. Chavda's opinion is sufficient to establish that the miner was totally disabled from performing his usual coal mine employment, based on the pulmonary function study and diffusion capacity evidence. The administrative law judge must explain how he resolves the conflict in the medical opinions regarding the interpretation of the diffusion capacity measurements and the degree of impairment represented on those studies. If the administrative law judge finds that the evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(i) or (iv), the administrative law judge must determine whether claimant has established that the miner was totally disabled, considering the contrary probative evidence pursuant to 20 C.F.R. §718.204(b)(2). *See Fields*, 10 BLR at 1-20-21; *Lafferty*, 9 BLR at 1-232.

If the miner is found to have been totally disabled, the Section 411(c)(4) presumption is invoked, and the administrative law judge must consider whether employer is able to rebut that presumption by establishing that the miner had neither legal nor clinical pneumoconiosis, 20 C.F.R. §718.305(d)(1)(i), or by establishing 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."[16] 20 C.F.R. §718.305(d)(1)(ii). If the administrative law judge finds that the evidence does not establish that the miner was totally disabled, he may reinstate the denial of benefits.

The Survivor's Claim

Because we vacate the administrative law judge's determination that claimant did not establish entitlement to benefits in the miner's claim, we also vacate his finding that

[16] We need not address claimant's argument that the administrative law judge erred in finding the evidence to be insufficient to establish the existence of pneumoconiosis, as the burden of proof may change on remand, depending on the administrative law judge's finding on total disability and whether claimant is able to invoke the Section 411(c)(4) presumption. If the presumption is invoked, the administrative law judge will have to reconsider the evidence with the burden of proof on employer to disprove that the miner had legal or clinical pneumoconiosis.

that claimant is not entitled to derivative benefits in the subsequent survivor's claim under Section 932(*l*).[17] 30 U.S.C. §932(*l*) (2012).

Accordingly, the administrative law judge's Decision and Order Denying Benefits in Living Miner's and Survivor's Claims is affirmed in part, vacated in part, and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

[17] The initial survivor's claim was denied by the district director because the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). As the denial became final, the only avenue for claimant to establish entitlement in this subsequent survivor's claim is through Section 932(*l*). *See Consolidation Coal Co. v. Maynes*, 739 F.3d 323, 328 (6th Cir. 2014).