U.S. Department of Labor

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

BRB No. 19-0080 BLA

LILLIE M. HALL (Widow of GARNIE M. HALL) Claimant-Petitioner v. CLINCHFIELD COAL COMPANY and PITTSTON COMPANY Employer/Carrier- Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 04/08/2020 DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Lillie M. Hall, St. Paul, Virginia.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer/carrier.

Before: BUZZARD, ROLFE, and GRESH, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals, without the assistance of counsel,[2] the Decision and Order on Remand Denying Benefits (2014-BLA-05921) of Administrative Law Judge Drew A. Swank rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a survivor's claim filed on October 29, 2013, and is before the Board for the second time.

In his initial Decision and Order Denying Benefits, the administrative law judge credited the miner with more than fifteen years of underground coal mine employment, but found claimant did not establish the miner was totally disabled at the time of his death. Therefore, he found claimant did not invoke the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305. Considering whether claimant established entitlement to benefits without the presumption, the administrative law judge found she failed to establish the existence of pneumoconiosis and denied benefits. 20 C.F.R. §718.202(a)

Upon review of claimant's appeal, the Board vacated the administrative law judge's findings that claimant did not establish the miner was totally disabled at the time of his death and thus that she did not invoke the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis. *Hall v. Clinchfield Coal Co.*, BRB No. 17-0079 BLA, slip op. at 5 (Mar. 1, 2018) (unpub.). The Board also vacated his finding that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a). *Hall*, BRB No. 17-0079 BLA, slip op. at 8-10. The Board instructed the administrative law judge on remand to determine whether claimant established that the miner was totally disabled at

[1] Claimant is the widow of the miner, who died on November 8, 2008. Director's Exhibit 9. Because there is no indication in the record that the miner was deemed eligible to receive benefits at the time of his death, claimant is not eligible for automatic survivor's benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012).

[2] Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested on claimant's behalf 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] Under Section 411(c)(4) of the Act, a miner's death is presumed due to pneumoconiosis if claimant establishes that the miner had at least fifteen years of underground coal mine employment, or surface coal mine employment in conditions substantially similar to those in an underground mine, and he also suffered from a totally disabling respiratory or pulmonary impairment at the time of his death. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305.

the time of his death to invoke the Section 411(c)(4) presumption. *Hall*, BRB No. 17-0079 BLA, slip op. at 11. If she invoked the presumption, the Board instructed him to consider whether employer rebutted it at 20 C.F.R. §718.305(d)(2)(i) or (ii). *Id*. If, however, claimant did not invoke the presumption, the Board instructed the administrative law judge to reconsider whether she established that the miner had clinical or legal pneumoconiosis and, if so, whether his death was due to pneumoconiosis. *Id*.

On remand, the administrative law judge found claimant established the miner was totally disabled at the time of his death and thus invoked the Section 411(c)(4) presumption. But he further found that employer rebutted the presumption and denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer responds in support of the decision and alleges error in the finding that the miner was totally disabled. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal by a claimant without the assistance of counsel, the Board considers whether the decision and order below is supported by substantial evidence. *See Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). We must affirm the administrative law judge's decision if his findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with applicable law.[4] 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 – Total Disability

To invoke the presumption of death due to pneumoconiosis, claimant must establish the miner had a totally disabling respiratory or pulmonary impairment "at the time of his death." 20 C.F.R. §718.305(b)(1)(iii). A miner is considered 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 pulmonary function studies, 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 weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987);

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner's coal mine employment occurred in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 5, 6.

Shedlock v. Bethlehem Mines Corp., 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

We reject employer's contention the administrative law judge erred in finding the miner was totally disabled at the time of his death, and therefore reject its contention he erred in finding claimant invoked the Section 411(c)(4) presumption.[5] Employer's Brief at 9-11. The administrative law judge accurately noted the Board affirmed his prior findings that claimant did not establish total disability at 20 C.F.R. §718.204(b)(i)-(iii) as there are no qualifying pulmonary function or arterial blood gas studies and no evidence the miner had cor pulmonale with right-sided congestive heart failure. Decision and Order on Remand at 6; *Hall*, BRB No. 17-0079 BLA, slip op. at 3.

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), he noted claimant's testimony that the miner's last coal mine job as a repairman in a coal preparation plant required "a lot" of lifting and carrying. Decision and Order on Remand at 6. He considered the miner's death certificate, Dr. Castle's opinion, and treatment records from Dr. Modi, Dr. Agarwal, and Norton Community Hospital. *Id*. at 6-9. The death certificate lists the immediate cause of the miner's death as "respiratory failure" due to metastatic cancer of "unknown primary [origin]."[6] Claimant's Exhibit 2. Dr. Castle stated the miner "did not have any evidence of respiratory impairment from any cause prior to the development of widely metastatic carcinoma to both lungs." Employer's Exhibit 6. In a report dated September 8, 1987, Dr. Modi noted the miner had: "a history of shortness of breath for the last [twelve] years. It has come on gradually to a point where he can only walk about 500 feet on level ground before he ends up with shortness of breath." Claimant's Exhibit 3. In a treatment note dated January 22, 2007, Dr. Agarwal indicated the miner complained of shortness of breath and was able to walk approximately 300 to 400 feet.[7] Employer's Exhibit 14. Norton

[5] Employer's argument in its response brief is in support of another method by which the administrative law judge may reach the same result and deny benefits. Employer's Response Brief at 9-11. Therefore, those arguments are properly before the Board, and no cross-appeal is required. *See Malcomb v. Island Creek Coal Co.*, 15 F.3d 364, 370 (4th Cir. 1994); *Dalle Tezze v. Director, OWCP*, 814 F.2d 129, 133 (3d Cir. 1987); *Whiteman v. Boyle Land & Fuel Co.*, 15 BLR 1-11, 1-18 (1991) (en banc); *King v. Tenn. Consolidated Coal Co.*, 6 BLR 1-87, 1-92 (1983).

[6] The first diagnosis of "diffuse metastatic disease" appears to be on October 12, 2008. Employer's Exhibit 13.

[7] Dr. Agarwal treated the miner for asthma and reported on December 21, 2007, that the miner was "able to carry out all of his activities of daily living," and on June 25, 2008,

Community Hospital treatment records dated October 12, 2008, November 5, 2008, and November 8, 2008 noted the miner was short of breath and had respiratory distress/failure. Employer's Exhibit 11.

The administrative law judge determined the opinions of Drs. Castle and Modi are not probative of whether the miner had a totally disabling respiratory impairment at the time of his death. Decision and Order on Remand at 7. Finding the death certificate and other treatment records the most probative evidence, the administrative law judge determined the miner would not have been able to perform the duties of his last coal mine job at the time of his death. *Id*. at 9. He therefore found claimant established the miner was totally disabled. *Id*.

Employer argues the administrative law judge erred in finding the miner's treatment records are sufficient to establish total disability as they do not explicitly address his ability to perform his usual coal mine work. Employer contends notations of "short[ness] of breath" and "respiratory distress/failure" are "symptoms" the miner experienced and do not establish his physical limitations. Employer's Response Brief at 10-11.

Contrary to employer's assertion, a physician need not specifically state whether a miner is totally disabled from his usual coal mine employment in order for his or her opinion to support a finding of total disability. *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); *Black Diamond Coal Co. v. Benefits Review Board* [*Raines*], 758 F.2d 1532, 1534 (11th Cir. 1985). An administrative law judge may reasonably compare a physician's opinion expressed in terms of physical limitations with the exertional requirements of a miner's usual coal mine work. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000). A physician's opinion may support a finding of total disability if it provides sufficient information to reasonably infer that a miner was unable to do his last coal mine job. *See Poole*, 897 F.2d at 894; *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988).

Here, the treatment records contain information beyond mere symptoms. The administrative law judge noted Dr. Agarwal reported before the miner's diagnosis of cancer that he was only able to walk 300 to 400 feet and in 2008 that the miner could walk one mile if his symptoms were controlled with medication. He found these notations "shed doubt" on whether the miner would be able to perform the duties of his last coal mine job that included walking across the plant and lifting and carrying tools. In addition, he permissibly determined the descriptions of respiratory distress in the treatment records, and

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that the miner could walk approximately one mile *with his symptoms of shortness of breath controlled with medication*. Employer's Exhibit 14.

the notation on the death certificate that the miner died of respiratory failure further support the conclusion the miner was unable from a respiratory standpoint to perform his last coal mine job. *See Scott*, 60 F.3d at 1142.

Weighing all the evidence together, the administrative law judge found the death certificate and treatment records entitled to the most weight as they are the most recent and relevant evidence to take into consideration the miner's respiratory condition after his diagnosis of cancer and "in the month and days leading to his death." *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 9. In contrast, he noted the most recent of the "non-qualifying" pulmonary function and arterial blood gas studies was conducted in 2006, long before the miner's death. He similarly found Dr. Modi's 1987 opinion did not establish total disability at the time of the miner's death. Finally, he permissibly found Dr. Castle's opinion the miner did not have a respiratory impairment *before* his cancer diagnosis in October 2008 is unexplained in light of his acknowledgment the miner had respiratory distress in the month leading to his death on November 8, 2008 and implies he developed impairment *after* his diagnosis. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order on Remand at 7, 8. Thus, the administrative law judge permissibly concluded there is no probative evidence to weigh against a finding of total respiratory disability. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

As substantial evidence supports the administrative law judge's credibility determinations, we affirm his findings that claimant established the miner was totally disabled at the time of his death and, thus, invoked the presumption of death due to pneumoconiosis at Section 411(c)(4).

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

Because claimant invoked the Section 411(c)(4) presumption of death due to pneumoconiosis, the burden shifted to employer to affirmatively establish the miner had neither legal nor clinical pneumoconiosis,[8] or "no part of [his] death was caused by

[8] "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). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "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

pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129 (4th Cir. 2015); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480 (6th Cir. 2011); *Copley v. Buffalo Mining Co.*, 25 BLR 1-81, 1-89 (2012). The administrative law judge found employer established rebuttal by disproving both clinical and legal pneumoconiosis. Based on our review, the administrative law judge's finding cannot be affirmed.

In finding employer disproved clinical pneumoconiosis, the administrative law judge initially considered four readings of a January 18, 1985 x-ray. 20 C.F.R. §718.202(a)(1); Decision and Order on Remand at 12-13. Drs. Wiot and Halbert, both dually-qualified as Board-certified radiologist and B readers, read the x-ray as negative for pneumoconiosis. Employer's Exhibits 19, 20. Dr. Fisher, also a dually-qualified radiologist, read it as positive for pneumoconiosis. Claimant's Exhibit 1. Dr. Modi, who is neither a Board-certified radiologist nor a B reader, also read it as positive for pneumoconiosis.[9] Noting the preponderance of the readings by the most highly qualified readers is negative, including Dr. Wiot's reading which he accorded the greatest weight,[10] the administrative law judge permissibly found this x-ray negative for pneumoconiosis. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81; *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-300 (2003); Decision and Order on Remand at 13.

The administrative law judge also considered Dr. Castle's negative readings of two x-rays in the miner's treatment records dated October 12 and 21, 2008. He discredited these readings because Dr. Castle, a B reader, did not classify them under the International Labour Organization (ILO) classification system or identify the films' quality.[11] *See* 20

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of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[9] Dr. Modi's reading of the January 18, 1985 x-ray is contained in the treatment records claimant submitted. Decision and Order on Remand at 13; Claimant's Exhibit 3.

[10] The administrative law judge noted in addition to being a dually-qualified radiologist, Dr. Wiot was Professor Emeritus of Radiology at the University of Cincinnati and President of the American College of Radiology.

[11] Although the quality standards set forth in 20 C.F.R. §718.102(b) and Appendix A to 20 C.F.R. Part 718 do not apply to x-ray readings contained in treatment records, the standards do apply to Dr. Castle's readings of the x-rays because employer procured his readings "in connection with" the present claim. 20 C.F.R. §718.101(b); *J.V.S.* [*Stowers*]

C.F.R. §718.102(a), (d)(1); Decision and Order on Remand at 14-15; Employer's Exhibit 23 at 13.

The administrative law judge noted the miner's treatment records contained additional x-ray readings and readings of computed tomography (CT) scans but "none . . . diagnose pneumoconiosis or mention anything relating to pneumoconiosis."[12] Decision and Order on Remand at 13-14. He further found the miner's other treatment records do not "contain a diagnosis of pneumoconiosis." *Id.* Thus he concluded "the treatment records do not support a finding of clinical pneumoconiosis." Decision and Order on Remand at 14.

Finally, the administrative law judge considered the miner's death certificate and the opinions of Drs. Modi and Castle. Decision and Order on Remand at 13-15; *see* 20 C.F.R. §718.202(a)(4). He found the death certificate identifies respiratory failure and cancer but does not mention pneumoconiosis.[13] Claimant's Exhibit 2. He discredited Dr. Modi's diagnosis of clinical pneumoconiosis as not well-documented or well-reasoned because Dr. Modi relied in part on the January 18, 1985 x-ray that the administrative law judge found to be negative and on other x-rays not submitted into evidence. Decision and Order on Remand at 13. He also discredited Dr. Castle's contrary opinion that claimant does not have clinical pneumoconiosis because it was based in part on his discredited negative readings of the October 12 and 21, 2008 x-rays. *Id.* at 15.

Having considered all the evidence relevant to the existence of clinical pneumoconiosis, the administrative law judge stated:

> In sum, based on the evidence as a whole, the undersigned finds that employer has rebutted the presumption of clinical pneumoconiosis. The

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v. Arch of W. Va./Apogee Coal Co., 24 BLR 1-78, 1-89, 1-92 (2008); Employer's Exhibit 23 at 1-2, 13.

[12] Dr. Gopalan, whose qualifications are not in the record, read x-rays dated October 12 and October 17, 2008, as showing diffuse metastatic disease in both lungs. Employer's Exhibits 1, 13. Dr. Haines, whose qualifications are not in the record, similarly read x-rays dated October 21 and November 5, 2008, and a computed tomography scan dated October 14, 2008, as showing diffuse metastatic changes in both lungs. Employer's Exhibits 5, 9, 12.

[13] The death certificate lists the cause of the miner's death as "respiratory failure" due to "metastatic carcinoma of unknown primary." Claimant's Exhibit 2; Director's Exhibit 9.

> undersigned determined that the January 18, 1985 x-ray is negative for pneumoconiosis. Dr. Modi's opinion finding clinical pneumoconiosis is not well-reasoned . . . and . . . Dr. Castle's opinion finding no clinical pneumoconiosis is not probative either. However, the treatment records that Employer submitted are probative and more recent and none of the chest x-ray[s] or CT scans included in them diagnose pneumoconiosis or mention anything related to pneumoconiosis.

Decision and Order on Remand at 15.

By invoking the Section 411(c)(4) presumption, claimant is presumed to have clinical and legal pneumoconiosis; the burden then shifts to employer to establish, with affirmative proof, that the miner did *not* have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(2)(i)(B); *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting). Thus, contrary to the administrative law judge's finding, the miner's treatment records, and the x-ray and CT scan readings contained in them, that are silent as to the existence of pneumoconiosis do not constitute "affirmative proof that the claimant does not have . . . pneumoconiosis" and thus do not support employer's burden. *See Smith*, 880 F.3d at 699-700 (physician's opinion that is neutral on presence of pneumoconiosis insufficient to rebut the presumption). Thus, the only remaining evidence that could support employer's burden to disprove clinical pneumoconiosis consists of Dr. Castle's negative readings of the October 12 and 21, 2008 x-rays and his medical opinion, which the administrative law judge explicitly discredited.[14] As there is no credited evidence that could rebut the presumption, we must reverse the administrative law judge's finding that employer affirmatively established that the miner did not suffer from clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B). Consequently, we also reverse the administrative law judge's finding that employer

[14] The January 18, 1985 x-ray, which the administrative law judge permissibly found negative for clinical pneumoconiosis, constitutes affirmative evidence that the miner did not have pneumoconiosis at least as of that date. Decision and Order on Remand at 13. Here, however, the administrative law judge found the Section 411(c)(4) presumption invoked based largely on evidence dating from 2007 and 2008, more than twenty years later. *Id*. at 6-9. As it would be illogical to find rebuttal established based on evidence that predates the evidence on which invocation of the presumption is based, the January 18, 1985 x-ray alone is insufficient to carry employer's burden. *See Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624 (6th Cir. 1988).

rebutted the Section 411(c)(4) presumption by disproving the existence of pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).[15]

Thus, to rebut the presumption, employer must show that clinical pneumoconiosis played "no part" in the miner's death. 20 C.F.R. §718.305(d)(2)(ii). It cannot. Where a physician erroneously fails to diagnose pneumoconiosis, his opinion as to causation "may not be credited at all" absent "specific and persuasive reasons" for concluding it is independent of the mistaken belief the miner did not have the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015), *citing Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995). Even then, the opinion can only be assigned, at most, "little weight." *See Epling*, 783 F.3d at 505. Here, employer cannot establish that Dr. Castle's opinion that clinical pneumoconiosis played no role in the miner's death -- the only evidence employer offered on the issue -- can be separated from his mistaken view that the miner did not suffer from the disease. Therefore, as a matter of law, his opinion cannot rebut the presumption. *Id.*

Dr. Castle opined no evidence exists that coal workers' pneumoconiosis played any role in causing, contributing, or hastening the miner's death. Employer's Exhibit 23. But he did not diagnose clinical pneumoconiosis; therefore, his opinion could only be accorded weight if "specific and persuasive" reasons exist to separate it from his view that the miner did not suffer from the disease. *See Epling*, 783 F.3d at 504-05; *Toler*, 43 F.3d at 116. No reasonable fact-finder could determine he offered such reasons.

While Dr. Castle opined pneumoconiosis did not cause the miner's fatal cancer, he did not address whether it contributed, along with cancer, to the miner's death from respiratory failure. Employer's Exhibit 23. Nor does his general statement the miner would have died "as and when he would have regardless of whether or not he had ever been a coal miner" provide a basis to credit his opinion: Dr. Castle offered no support for this conclusion other than his mistaken belief the miner suffered from no coal dust induced diseases. *See Epling*, 783 F.3d at 505-06. Dr. Castle provides no other explanation why clinical pneumoconiosis played no part in the miner's death. Employer's Exhibit 23. Thus substantial evidence does not exist to find he provided specific and persuasive reasons to credit his opinion. *See Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (substantial evidence is such evidence "that a reasonable mind would accept to support a conclusion."); *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 282 (4th Cir. 2010); *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208 (4th Cir. 2000). As there is no other

[15] Therefore, we need not address the administrative law judge's finding that employer disproved the existence of legal pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order on Remand at 13-15.

evidence in the record that could support employer's burden, employer failed to rebut death causation.[16] *See* 20 C.F.R. §718.305(d)(2)(ii).

Because claimant invoked the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis, and employer did not rebut the presumption, claimant has established entitlement to benefits.

Accordingly, the administrative law judge's Decision and Order on Remand Denying Benefits is reversed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

[16] Dr. Modi's medical opinion predates the miner's death by several years and thus does not address its cause. The miner's death certificate and treatment records similarly do not establish that clinical pneumoconiosis played no part in the miner's death because, as the administrative law judge found, they do not address the existence or absence of the disease. Claimant's Exhibits 2, 3; Employer's Exhibits 2-6, 10, 11, 14.