U.S. Department of Labor

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

BRB Nos. 20-0091 BLA
and 21-0198 BLA

PHYLLIS E. GRAHAM (o/b/o and Widow of BOBBY H. GRAHAM)	)	
Claimant-Respondent	)	
v.	)	
PRESLEY TRUCKING COMPANY, INCORPORATED	)	DATE ISSUED: 08/31/2021
and	)	
KENTUCKY EMPLOYERS MUTUAL INSURANCE	)	
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeals of the Decision and Order Awarding Benefits and Decision and Order Granting Claimant's Motion for Summary Decision and Cancelling Hearing of Francine L. Applewhite and Theodore W. Annos, respectively, Administrative Law Judges, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Paul E. Jones and Denise Hall Scarberry (Jones & Jones Law Office, PLLC), Pikeville, Kentucky, for Employer and its Carrier.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge Francine L. Applewhite's Decision and Order Awarding Benefits (2018-BLA-05456) and Administrative Law Judge Theodore W. Annos's Decision and Order Granting Claimant's Motion for Summary Decision and Cancelling Hearing (2020-BLA-05463) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). The miner's claim was filed on February 9, 2015, and the survivor's claim was filed on January 2, 2020. The Benefits Review Board has consolidated the appeals of both claims for purposes of decision only.

In a November 15, 2019 Decision and Order issued in the miner's claim, Judge Applewhite credited the Miner[1] with thirty-three years of coal mine employment, as stipulated by Employer, with at least fifteen years spent underground, and found he had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). She further found Employer did not rebut the presumption and awarded the Miner benefits, beginning February 2015. In a separate January 7, 2021 Decision and Order, Judge Annos found Claimant was entitled to derivative survivor's benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[3]

---

[1] The Miner died on August 16, 2019. Survivor's Claim Director's Exhibit 2. Claimant is the widow of the Miner and is pursuing the miner's claim on his behalf, along with her own survivor's claim.

[2] Section 411(c)(4) provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[3] Under Section 422(*l*) of the Act, the survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits, without

On appeal of the miner's claim, Employer contends Judge Applewhite erred in finding Claimant established total disability, and thus erred in finding she invoked the Section 411(c)(4) presumption. It also contends Judge Applewhite erred in finding that it did not rebut the presumption and in awarding benefits beginning February 2015. On appeal of the survivor's claim, Employer contends Judge Annos erred in awarding Claimant derivative survivor's benefits based on Judge Applewhite's errors in awarding benefits in the miner's claim. Claimant responds in support of the awards of benefits. The Director, Office of Workers' Compensation Programs, did not file a substantive response in either claim.[4]

The Board's scope of review is defined by statute. We must affirm the administrative law judges' Decisions and Orders if they are rational, supported by substantial evidence, and in accordance with applicable law.[5] 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).

Miner's Claim

Invocation of the Section 411(c)(4) Presumption – Total Disability

A miner was totally disabled if he had a pulmonary or respiratory impairment which, 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*

having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[4] We affirm, as unchallenged, Judge Applewhite's finding that the Miner had thirty-three years of coal mine employment, with at least fifteen years spent underground. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[5] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit as the Miner performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 2 n.4; Director's Exhibit 11.

& Laughlin Steel Corp., 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

Employer challenges Judge Applewhite's (the administrative law judge's) finding that Claimant established total disability based on the medical opinions.[6] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 8-9; Employer's Brief at 5-11. It argues she did not address the exertional requirements of Claimant's usual coal mine work, conflated the issues of total disability and disability causation, did not resolve conflicts in the evidence, did not consider all relevant evidence, and failed to adequately explain her credibility determinations. Employer's Brief at 5-11. Employer's arguments have merit.

Drs. Green, Jarboe, and Dahhan offered medical opinions in the miner's claim. The administrative law judge summarized the physicians' findings and observed each "concluded that the [Miner's] pulmonary function testing and arterial blood gas studies did not meet federal disability guidelines" but also found he had "decreased residual and diffusing lung capacity with some hypoxemia, resulting in a pulmonary/respiratory impairment." Decision and Order at 8. She credited Dr. Green's opinion that the Miner was totally disabled over the contrary opinions of Drs. Jarboe and Dahhan that he was not. *Id*.

Initially, we reject Employer's general assertion that the administrative law judge erred in crediting Dr. Green's opinion on total disability because he relied on non-qualifying pulmonary function and blood gas studies.[7] Employer's Brief at 10-11. The regulations specifically provide that total disability may be established based on a physician's reasoned opinion that a miner could not perform his or her usual coal mine employment, even when the pulmonary function and arterial blood gas studies are non-qualifying. 20 C.F.R. §718.204(b)(2)(iv); *see Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000); *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744 (6th Cir. 1997).

---

[6] The administrative law judge found Claimant could not establish total disability based on either the pulmonary function studies or the arterial blood gas studies, and that there was no evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 4-5.

[7] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

We agree with Employer, however, that the administrative law judge did not adequately explain her credibility findings and improperly conflated the issues of total disability and disability causation when analyzing the medical opinions at 20 C.F.R. §718.204(b)(2)(iv). Employer's Brief at 9-11. The only support the administrative law judge gave for crediting Dr. Green was to summarily note his "opinion, including the [Miner's] 30 years coal mining history and 49 years smoking history," was "well-reasoned;" she then concluded his opinion "that the [Miner] is totally disabled is given great weight." Decision and Order at 9. The administrative law judge gave less weight to Dr. Jarboe's opinion on total disability because, by acknowledging the Miner "has chronic bronchitis and a reactive airway disease that could be found in coal workers' pneumoconiosis, but is not legal pneumoconiosis," he relied not on the Miner's "condition but generalities." *Id*. In discrediting Dr. Dahhan's opinion on total disability, the administrative law judge stated the doctor's "conclusion that the [Miner's] restrictive ventilator [sic] impairment was not caused by, related to, contributed to, or aggravated by inhalation of coal dust, but a result of his previous stroke and moderate obesity[,] is also not well documented or reasoned." *Id.*

Contrary to the administrative law judge's analysis, the proper inquiry at 20 C.F.R. §718.204(b)(2) is whether the Miner had a totally disabling respiratory or pulmonary impairment, while the cause of that impairment is addressed at 20 C.F.R. §718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption. *See* 20 C.F.R. §§718.204(c), 718.305(d)(1)(ii); *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 698 (4th Cir. 2018); *Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989). The administrative law judge erred in her weighing of the medical opinions because she focused on the cause of the Miner's respiratory or pulmonary impairment and did not assess whether the physicians' opinions were reasoned, documented and sufficient to satisfy Claimant's burden to establish the Miner's respiratory or pulmonary impairment would have prevented him from performing his usual coal mine employment. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000) (the administrative law judge must examine the reasoning employed in a medical opinion).

Moreover, because all of the physicians diagnosed the Miner with a respiratory impairment, the administrative law judge was required to assess the credibility of their opinions in light of their understanding of the exertional requirements of the Miner's usual coal mine work.[8] *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997) (a

[8] Drs. Green and Jarboe reported the Miner last worked as a coal truck driver. Director's Exhibits 18 at 1; 47 at 12, 40; Employer's Exhibit 1 at 9. Dr. Dahhan described the Miner's usual coal mine work as a loader operator, shuttle car operator, and roof bolter,

physician's opinion that a miner's impairment is not totally disabling lacks probative value if the physician does not know the miner's job requirements); *Eagle v. Armco, Inc.*, 943 F.2d 509, 512 (4th Cir. 1991); *Walker v. Director, OWCP*, 927 F.2d 181, 183 (4th Cir. 1991). The administrative law judge noted the Miner last worked as a coal loader and hauler, but his "primary job" was as a roof bolter.[9] Decision and Order at 3-4. She failed to properly identify the Miner's usual coal mine work and the physical demands associated with it for comparison with the medical opinions.[10] *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988).

Additionally, the administrative law judge failed to address the totality of Dr. Green's opinion on total disability. The administrative law judge relied on Dr. Green's opinion that the Miner was totally disabled, as set forth in his March 7, 2015 report and December 14, 2016 supplemental report. Decision and Order at 6, 8-9; Director's Exhibits 18, 27, 29. However, the administrative law judge did not address Dr. Green's April 14, 2017 deposition testimony and his supplemental report dated August 2, 2017.[11] Employer's Brief at 5-6, *see* Director's Exhibits 30, 47. We do not reach any conclusions regarding the overall credibility of Dr. Green's opinion, as that is the administrative law

---

Employer's Exhibit 6 at 3, and observed that his reporting of the Miner's usual coal mine work was different from Dr. Green's. Employer's Exhibit 7 at 4.

[9] On his Form CM-911a, Employment History, the Miner indicated he worked as a coal truck driver for fourteen years and as a roof bolter for seventeen and a half years. Director's Exhibit 2. At his deposition, the Miner testified that his "main job" was working as a roof bolter and his last coal mine work was as a truck driver, hauling and occasionally loading coal. Director's Exhibit 46 at 12, 14-15. Mr. Presley, the Miner's former supervisor, testified by deposition that the Miner's usual coal mine work was as a truck driver, and not an underground miner. Employer's Exhibit 8 at 6-9.

[10] A miner's usual coal mine work is the most recent job he performed regularly and over a substantial period of time. *See Pifer v. Florence Mining Co.*, 8 BLR 1-153, 1-155 (1985); *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982).

[11] No party challenges the admissibility of Dr. Green's deposition. Decision and Order at 2. Claimant responds only that she "cannot explain why" the administrative law judge did not consider Dr. Green's deposition testimony. Claimant's Brief at 8. Employer contends Dr. Green's deposition testimony and his 2017 report contradict his earlier conclusions on total disability. Employer's Brief at 8-9.

judge's task.[12] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998). Because the administrative law judge failed to address all of the relevant evidence[13] and explain the weight she accorded it, her decision does not comply with the Administrative

---

[12] During his April 14, 2017 deposition, Dr. Green was asked about Dr. Dahhan's February 2, 2017 pulmonary function test results and the results from his own February 22, 2017 and March 30, 2017 testing, all of which exceeded the minimum federal criteria for disability. Director's Exhibit 47 at 30-40. Dr. Green stated that "[b]ased on the trend of the numbers and the latest numbers, I would have to say that they don't support a stable pulmonary disability." *Id*. at 35. Factoring in the non-qualifying values obtained on the March 7, 2015 pulmonary function study the Miner performed, he stated "[t]his gentleman would still potentially have difficulty in his job driving a truck and lifting however many pounds, taking two or three steps to get into a vehicle, 268 pounds. It takes a certain amount of effort." *Id*. at 57. Dr. Green also testified that Dr. Dahhan's February 2, 2017 blood gas study results and his own March 7, 2015 blood gas results were above the federal criteria for disability, but were still abnormal and demonstrated hypoxemia. *Id*. at 36-37, 57. He concluded the Miner "is disabled . . . because of the hypoxemia." *Id*. at 38. In his August 2, 2017 report, Dr. Green reviewed Dr. Dahhan's February 2, 2017 report, in which Dr. Dahhan diagnosed a non-disabling mild ventilatory impairment as confirmed by the Miner's pulmonary function and blood gas study results that exceeded the disability standards. Director's Exhibits 28, 30. Dr. Green explained that the Miner had a totally disabling respiratory impairment based on his "significant chronic obstructive pulmonary disease" and "significant degree of hypoxemia," remained unchanged. Director's Exhibit 30.

[13] The administrative law judge also did not specifically consider medical treatment records containing the February 22, 2017 and March 30, 2017 pulmonary function studies, which Employer alleges support the opinions of its medical experts that the Miner's respiratory function "continuously improved over time." Employer's Brief at 5-6; *see* Employer's Exhibits 3, 4, 9. Claimant responds that these pulmonary function studies are not treatment studies but were developed in connection with the miner's claim for benefits, which she exchanged with Employer. Claimant's Brief at 5; *see* 20 C.F.R. §725.413. Thus, Claimant contends the studies should not be admissible, as neither party identified them as evidence. Claimant's Brief at 5; *see* 20 C.F.R. §725.413(d) (evidence exchanged has to be designated by a party to be properly considered). On remand, the administrative law judge must address and resolve this evidentiary issue. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-153 (1989) (en banc).

Procedure Act (APA).[14] 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, 1-165 (1989); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-988 (1984) (failure to discuss relevant evidence requires remand).

Based on these errors, we vacate the administrative law judge's findings at 20 C.F.R. §718.204(b)(2)(iv) and her overall determination that the Miner had a totally disabling respiratory or pulmonary impairment. Thus we vacate the administrative law judge's finding that Claimant invoked the Section 411(c)(4) presumption, and therefore vacate the award of benefits in the miner's claim. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

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

In the interest of judicial efficiency, we address Employer's assertions concerning the administrative law judge's rebuttal findings. Once the Section 411(c)(4) presumption is invoked, the burden shifts to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[15] or that "no part of [his] 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). The administrative law judge found Employer failed to establish rebuttal by either method.

Clinical Pneumoconiosis

The administrative law judge considered seven readings of three x-rays dated March 7, 2015; January 26, 2017; and February 2, 2017. Decision and Order at 10-11; *see*

---

[14] The Administrative Procedure Act, 5 U.S.C. §500 *et seq.*, 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).

[15] "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). The definition includes "any chronic pulmonary disease or respiratory or pulmonary 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 of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

Director's Exhibits 18, 20, 21, 25; Claimant's Exhibits 1, 2; Employer's Exhibits 1, 2. All of the readers are dually-qualified as B readers and Board-certified radiologists. *Id.* Dr. Crum interpreted the March 7, 2015 x-ray as profusion 0/0 with p/q small opacities in five zones consistent with pneumoconiosis and pleural abnormalities consistent with pneumoconiosis. Director's Exhibit 18. Dr. Kendall read the same x-ray as negative for pneumoconiosis, while Dr. Miller read it as positive.[16] Director's Exhibits 21, 25. Based on Drs. Crum's and Miller's readings, the administrative law judge found this x-ray was positive for pneumoconiosis. Decision and Order at 10-11. Dr. Kendall read the January 26, 2017 and February 2, 2017 x-rays as negative for pneumoconiosis, while Dr. Miller read them as positive. Claimant's Exhibits 1, 2; Employer's Exhibits 1, 2. The administrative law judge found the readings of these x-rays were in equipoise and did not support or refute a finding of pneumoconiosis. Decision and Order at 11.

The administrative law judge therefore found one positive x-ray for clinical pneumoconiosis and the readings of two other x-rays in equipoise. She found the x-ray evidence as a whole established the existence of clinical pneumoconiosis and therefore determined Employer did not rebut the presumed existence of clinical pneumoconiosis. Decision and Order at 11, 14. In making this determination, the administrative law judge noted Dr. Kendall's negative readings were contradicted by the positive readings of two different equally qualified readers, and that the overall balance of the x-rays was four positive readings versus three negative readings. *Id.* However, she improperly found Dr. Crum's 0/0 reading of the March 7, 2015 x-ray constituted a positive interpretation. Employer's Brief at 11-12; *see* Decision and Order at 10-11; Director's Exhibit 18. The regulation at 20 C.F.R. §718.102(d)(3) specifically states that "[a] chest radiograph classified under any of the foregoing ILO classification systems as Category 0, including subcategories 0-, 0/0, or 0/1, does not constitute evidence of pneumoconiosis." 20 C.F.R. §718.102(d)(3); *see Preston v. Director, OWCP*, 6 BLR 1-1229, 1-1233 (1984). Because the administrative law judge's error affected her overall weighing of the x-ray evidence, we vacate her finding that Employer did not disprove the Miner had clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B).

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b),

---

[16] Dr. Gaziano, a B reader, reviewed the March 7, 2015 x-ray for quality purposes only. Director's Exhibit 20.

718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Co*., 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on the opinions of Drs. Jarboe and Dahhan to disprove legal pneumoconiosis. The administrative law judge summarily noted their opinions were "based on generalities" and found Employer "did not successfully refute the existence of legal pneumoconiosis." Decision and Order at 14. We agree with Employer that the administrative law judge has not adequately explained the basis for her credibility findings as the APA requires. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165; *McCune*, 6 BLR at 1-988. The administrative law judge also failed to take into account the proper rebuttal standard on legal pneumoconiosis when weighing the medical opinions.[17] 20 C.F.R. §718.305(d)(1)(i)(A).

Disability Causation

The administrative law judge next considered whether Employer established "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)(ii). The administrative law judge gave little weight to the opinions of Drs. Dahhan and Jarboe on disability causation. She stated only that "even if the [Miner's] chronic bronchitis, reactive airway disease or mild ventilatory impairment was not caused by exposure to coal dust, the fact that the [Miner] had [thirty-four] years of coal mine employment would not on its own prove that future exposure would not aggravate his conditions." Decision and Order at 15. Contrary to the administrative law judge's analysis, whether or not "future exposure" may have aggravated Claimant's respiratory condition is not the applicable legal standard for disability causation. *Id*. Rather, Employer must establish that no part of Claimant's respiratory or pulmonary disability was related to clinical or legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

Commencement Date for Benefits

Because we have vacated the administrative law judge's award of benefits, we decline to address Employer's contentions regarding her determination of February 2015 as the date from which benefits commence in the miner's claim. – this decision is premature. Decision and Order at 15; Employer's Brief at 18. If, however, the administrative law judge finds the evidence sufficient to award benefits in the miner's claim on remand, she must then consider and fully discuss the relevant, credible evidence

---

[17] Employer also argues the administrative law judge erred in crediting Dr. Green's opinion that the Miner had legal pneumoconiosis. Employer's Brief at 16-17. We decline to address Employer's argument as premature.

to determine the date from which the Miner's pneumoconiosis became totally disabling. *See* 20 C.F.R. §725.503; *Rochester & Pittsburgh Coal Co. v. Krecota*, 868 F.2d 600, 603 (3d Cir. 1989); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989); Director's Exhibits 18, 27, 29, 30, 47; Employer's Exhibits 1, 5, 6, 7, 10.

Remand Instructions

The administrative law judge must initially reconsider whether Claimant established the Miner was totally disabled at 20 C.F.R. §718.204(b)(2)(iv). She must determine what the Miner's usual coal mine work was and its exertional requirements, resolving any conflicts in the record on this issue. Thereafter, she must consider the credibility of the opinions of Drs. Green, Dahhan, and Jarboe in light of their understanding of the exertional requirements of the Miner's usual coal mine work, focusing her analysis on the presence or absence of a totally disabling respiratory or pulmonary impairment without regard to causation. She must specifically consider the physicians' qualifications, the explanations of their medical opinions, the documentation underlying their judgments, the sophistication and bases of their diagnoses, and provide an adequate explanation for crediting one medical opinion over another. *See Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Wojtowicz*, 12 BLR at 1-165.

If the administrative law judge again finds the medical opinion evidence sufficient to support a finding of total disability, she must weigh all the evidence together to determine whether the Miner had a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987). If the administrative law judge finds total disability established, Claimant invokes the Section 411(c)(4) presumption, and she must reconsider whether Employer rebutted the presumption, considering the errors noted in this decision. If Claimant does not establish total disability, benefits are precluded. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989). If the administrative law judge awards benefits in the miner's claim, she must determine the date from which the Miner's pneumoconiosis became totally disabling, and award benefits from that date. 20 C.F.R. §725.503.

<u>Survivor's Claim</u>

Because we vacate the award of benefits in the miner's claim, we also vacate Judge Annos's determination that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. §932(*l*). On remand, if Claimant is found entitled to benefits in the miner's claim, she is also entitled to automatic survivor's benefits. 30 U.S.C. §932(*l*). However, if the miner's claim is denied on remand, Claimant must establish entitlement to survivor's benefits by establishing the Miner's death was due to pneumoconiosis. 20 C.F.R. §§718.1, 718.205; 718.305; *see Neeley v. Director, OWCP*, 11 BLR 1-85, 1-86 (1988).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits in the miner's claim is affirmed in part, vacated in part, and Judge Annos's Decision and Order Granting Claimant's Motion for Summary Decision in the survivor's claim is vacated, and the claims are remanded for further consideration consistent with this opinion.[18]

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

[18] For purposes of judicial efficiency, both the miner's and survivor's claims should be consolidated on remand and considered by Judge Applewhite, as it is her findings that need to be reconsidered on remand.