U.S. Department of Labor

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

BRB Nos. 20-0415 BLA
and 20-0416 BLA

CAROL EPPLEY (o/b/o and Widow of VIRGIL E. EPPLEY) Claimant-Respondent v. CENTRAL OHIO COAL COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 08/31/2021 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits in the Miner's Claim and Granting Automatic Entitlement in the Survivor's Claim of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for Claimant.

Kathy L. Snyder (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer.

Steven Winkelman (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge Joseph E. Kane's Decision and Order Awarding Benefits in the Miner's Claim and Granting Automatic Entitlement in the Survivor's Claim (2013-BLA-05849, 2013-BLA-05850) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's subsequent claim filed on March 22, 2011,[1] and a survivor's claim filed on July 26, 2011.

The administrative law judge found Claimant established the Miner had 36.03 years of surface coal mine employment in conditions substantially similar to those in an underground mine and a totally disabling respiratory or pulmonary impairment, thereby establishing a change in an applicable condition of entitlement. 20 C.F.R. §§718.204(b)(2), 725.309(c). He also found Claimant invoked the presumption that the Miner was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits in the miner's claim. Because the Miner was entitled to benefits at the time of his death, the administrative law judge also found Claimant automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[3]

[1] Claimant is the widow of the Miner, who died on April 24, 2011. Director's Exhibit 13. The Miner's four previous claims for benefits were all denied, and those denials are final. Director's Exhibits 1-4. On December 8, 2006, the district director denied the Miner's most recent prior claim, filed on December 27, 2005, by reason of abandonment. Director's Exhibit 4. The Miner took no further action until filing his fifth claim on March 22, 2011. Director's Exhibit 6. Claimant filed her survivor's claim on July 26, 2011. The Board consolidated Employer's appeals in the miner's and survivor's claims for purposes of decision only.

[2] Section 411(c)(4) of the Act 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 impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[3] 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

On appeal in the miner's claim, Employer challenges the administrative law judge's determination that it was timely filed. Employer also argues he erred in finding the Miner had at least fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. It further contends he erred in finding it did not rebut the presumption.[4] In the survivor's claim, Employer argues he erred in awarding benefits under Section 422(*l*) before the award of benefits in the miner's claim became final. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, asserting the Miner timely filed his subsequent claim. He urges the Benefits Review Board to reject Employer's argument that the administrative law judge erred in awarding survivor's benefits under Section 422(*l*).

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is 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).

The Miner's Claim - Timeliness of Claim

Section 422(f) of the Act provides that "[a]ny claim for benefits by a miner . . . shall be filed within three years after . . . a medical determination of total disability due to pneumoconiosis . . . ." 30 U.S.C. §932(f). Miners' claims are presumed to be timely filed. 20 C.F.R. §725.308(c). To rebut the timeliness presumption, Employer must show that the claim was filed more than three years after a "medical determination of total disability due to pneumoconiosis" was communicated to the Miner. 30 U.S.C. §932(f); 20 C.F.R. §725.308(a).

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

[4] We affirm, as unchallenged on appeal, the administrative law judge's findings that Claimant established the Miner was totally disabled and thus established a change in an applicable condition of entitlement. 20 C.F.R. §§718.204(b), 725.309(c); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11.

[5] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because the Miner performed his last coal mine employment in Ohio. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 7; Hearing Tr. at 16.

On the timeliness issue, the administrative law judge considered Dr. Saludes's March 22, 2006 medical opinion, submitted in the Miner's 2005 claim, that the Miner was totally disabled due to pneumoconiosis.[6] Decision and Order at 7; Director's Exhibit 4. He also considered Claimant's testimony that, eight years before the Miner died on April 24, 2011, a physician told the Miner that he was totally disabled because of his "black lung." Decision and Order at 7; Hearing Tr. at 27-28. The administrative law judge found this evidence insufficient to trigger the statute of limitations. Decision and Order at 7. He noted this evidence preceded the district director's December 8, 2006 denial of the 2005 claim; thus, any communication of total disability due to pneumoconiosis that predated that denial is a misdiagnosis that cannot trigger the statute of limitations. *Id*. He also noted Claimant could not testify to the specifics of any physician's opinion or the Miner's understanding of any opinion, and thus "the evidence does not establish the Miner knew about a valid finding of total disability due to pneumoconiosis." *Id*.

We reject Employer's argument the administrative law judge erred in finding the evidence insufficient to trigger the statute of limitations. Employer's Brief at 5-7.

The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held a medical determination of total disability due to pneumoconiosis predating a prior denial of benefits is legally insufficient to trigger the statute of limitations for filing a subsequent claim because it must be deemed a misdiagnosis in view of the superseding denial of benefits. *Peabody Coal Co. v. Director, OWCP* [*Brigance*], 718 F.3d 590, 594 (6th Cir. 2013); *Arch of Kentucky, Inc. v. Director, OWCP* [*Hatfield*], 556 F.3d 472, 483 (6th Cir. 2009). Further, a denial by reason of abandonment shall be deemed a finding that the claimant has not established any applicable condition of entitlement. 20 C.F.R. §725.308(c).

The district director's December 8, 2006 denial of the Miner's 2005 claim by reason of abandonment was tantamount to a determination that he was not totally disabled due to pneumoconiosis, and thus repudiated Dr. Saludes's March 22, 2006 opinion, along with any other communication of total disability due to pneumoconiosis that predated that denial. *Brigance*, 718 F.3d at 594; 20 C.F.R. §725.308(c); Decision and Order at 7;

[6] Based on a January 19, 2006 examination, Dr. Saludes diagnosed coal workers' pneumoconiosis, bilateral pleural thickening that "could be" related to obesity or asbestos-related lung disease, and chronic obstructive pulmonary disease [(COPD)] due to cigarette smoking. Director's Exhibit 4. Acknowledging he was unable to determine the contribution of the Miner's pulmonary impairment, Dr. Saludes opined that 75% of his impairment was due to COPD "and about 25% would be attributable to his coal workers' pneumoconiosis and coal dust exposure." *Id*.

Director's Exhibit 4. Consequently, the administrative law judge correctly found this evidence could not trigger the time limit for filing a subsequent claim. *Brigance*, 718 F.3d at 595-96; *Hatfield*, 556 F.3d at 483; Decision and Order at 7.[7]

We likewise find no merit in Employer's assertion that the misdiagnosis rule should only apply to a denial of a prior claim on the merits as opposed to a denial of a prior claim by reason of abandonment. Employer's Brief at 9-10. As the Director correctly argues, the Sixth Circuit has not limited its holdings in *Brigance* and *Hatfield* in such a manner. Director's Brief at 5-7. Rather, the court explained in *Brigance* that if "it is determined that a claimant does not meet the criteria for an award of benefits under the [Black Lung Benefits Act], then the claimant is handed a clean slate for purpose[s] of the . . . statute of limitations." 718 F.3d at 595-96. Furthermore, by the plain language of the regulation an abandoned claim is deemed one in which a claimant has not established any applicable condition of entitlement; therefore, the claimant did not meet the criteria for an award of benefits under the Act. 20 C.F.R. §725.308(c). In light of the foregoing, we affirm the administrative law judge's finding that the Miner timely filed his subsequent claim. 30 U.S.C. §932(f); 20 C.F.R. §725.308(a); Decision and Order at 7.

Invocation of the Section 411(c)(4) Presumption - Qualifying Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner worked at least fifteen years in underground coal mines or surface coal mines in conditions "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4) (2018); *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011). The conditions in a surface mine are "substantially similar" to those underground if "the miner was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2); *see Zurich American Insurance Group v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 663 (6th Cir. 2015); *Central Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 489-90 (6th Cir. 2014).

[7] The administrative law judge also permissibly found Claimant's testimony insufficient to trigger the statute of limitations because she could not testify to the specifics of any physician's opinion; we note, however, there is no requirement that the medical opinion be a reasoned opinion and there is no requirement that the claimant be shown to have understood it. *See Peabody Coal Co. v. Director, OWCP* [*Brigance*], 718 F.3d 590, 594 (6th Cir. 2013); *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305-06 (6th Cir. 2005); *Tackett v. Cargo Mining Co*., 12 BLR 1-11, 1-14 (1988); Decision and Order at 7; Hearing Tr. at 28-29.

Claimant testified she visited the Miner at his strip mine job and his working conditions were "terrible" and "dirty." Hearing Tr. at 17. She further testified the Miner was covered in black dust and dirt "from head to toe" after each workday, and his "face, hands, and clothes would all be covered in dust." *Id*. at 18. The administrative law judge found the Miner worked for 36.03 years in surface coal mine employment and determined Claimant's testimony credibly establishes the Miner was regularly exposed to coal mine dust. *Id*.

Employer does not challenge the administrative law judge's finding that Claimant established the Miner had 36.03 years of surface coal mine employment. Decision and Order at 10. We therefore affirm this finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10.

Employer instead asserts Claimant's testimony is insufficient to establish substantial similarity because "there is nothing in the record, in objective terms, describing the Miner's employment conditions to suggest [his] work above-ground regularly exposed him to coal mine dust comparative to those in underground mines." Employer's Brief at 11-12.

Claimant is not required to prove the dust conditions aboveground were identical to those underground. *See Kennard*, 790 F.3d at 664-65; 78 Fed. Reg. 59,102, 59,105 (Sept. 25, 2013). Instead, she need only establish the Miner was "regularly exposed to coal-mine dust" while working at surface mines. 20 C.F.R. §718.305(b)(2). The administrative law judge permissibly found Claimant's uncontested testimony credible and adequately detailed regarding the Miner's dust exposure in his surface coal mine employment, such that he was regularly exposed to coal mine dust.[8] *See Duncan*, 889 F.3d at 304; *Kennard*, 790 F.3d at 663; *Sterling*, 762 F.3d at 489-90; *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Tackett v. Cargo Mining Co*., 12 BLR 1-11, 1-14 (1988); Decision and Order at 10.

As it is supported by substantial evidence, we affirm the administrative law judge's finding that Claimant established the Miner had at least fifteen years of qualifying coal

[8] We reject Employer's argument that the administrative law judge selectively analyzed the evidence in determining that Claimant's hearing testimony was tenuous on the issue of timeliness, but credible on the issue of regular dust exposure. Employer's Brief at 8, 12-13. The administrative law judge may find Claimant's testimony less detailed on one issue, but more specific and probative on another issue. *See Martin*, 400 F.3d at 305-06; *Tackett*, 12 BLR at 1-14 ("The Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable.").

mine employment. We therefore affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b); Decision and Order at 11.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[9] 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 did not establish rebuttal by either method.[10]

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." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-154-56 (2015). The Sixth Circuit holds this standard requires Employer to show the Miner's coal mine dust exposure "did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a de minimis impact on the miner's lung impairment." *Id*. at 407, *citing Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014).

Employer relied on the medical opinions of Drs. Altmeyer, Ghio, and Mumma that the Miner had chronic obstructive pulmonary disease (COPD) due to cigarette smoking and unrelated to coal mine dust exposure. Director's Exhibit 4; Employer's Exhibits 1, 3.

[9] 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 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 pneumoconiosis, *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).

[10] The administrative law judge found Employer disproved clinical pneumoconiosis. Decision and Order at 14-15.

The administrative law judge found their opinions inadequately explained and thus insufficient to disprove legal pneumoconiosis. Decision and Order 17-21.[11]

Employer argues the administrative law judge applied an improper standard by requiring Drs. Altmeyer and Mumma to "rule out" coal mine dust exposure as a causative factor for the Miner's COPD. Employer's Brief at 17, 25. We disagree. The administrative law judge correctly recognized Employer has the burden to establish the Miner did not have a chronic lung disease or impairment significantly related to, or substantially aggravated by, coal mine dust exposure. *See* 20 C.F.R. §§718.201(b), 718.305(d)(1)(i); Decision and Order at 12, 21. Moreover, he discredited the opinions of Drs. Altmeyer and Mumma because he found they are inadequately reasoned, not because they failed to meet a heightened legal standard. *See Young*, 947 F.3d at 405; *Groves*, 761 F.3d at 600; Decision and Order at 15-21.[12]

Further, the administrative law judge did not err in discrediting their opinions. Dr. Altmeyer excluded coal dust exposure, in part, because the Miner's August 1, 2006 pulmonary function study evidenced acute bronchoreversibility "consistent with naturally occurring asthma or a bronchospastic component of [COPD] due to prior tobacco smoking." Director's Exhibit 4. He also noted the acute bronchoreversibility was not consistent with "coal workers' pneumoconiosis or silicosis" because these fixed or progressive diseases do "not respond to bronchodilator therapy." *Id*. The administrative law judge permissibly found Dr. Altmeyer did not adequately explain why this factor necessarily eliminated coal mine dust exposure as a contributing cause of the impairment that remained after bronchodilators were administered. *See Young*, 947 F.3d at 405-09; *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order at 17. Further, he permissibly found Dr. Altmeyer failed to adequately explain why coal mine dust exposure "was not at least a contributing factor to the Miner's asthma," i.e., why the Miner's asthma was not significantly related to or substantially aggravated by coal mine

[11] The administrative law judge also considered the treatment records of Drs. Renaud, Albirini, and Adamo diagnosing COPD and emphysema. Decision and Order at 21; Director's Exhibit 19. He reasonably found these records do not assist Employer in rebutting the Section 411(c)(4) presumption. Decision and Order at 21.

[12] We understand the administrative law judge's references to excluding coal dust as a contributing cause as reflecting the fact that the physicians excluded coal dust as having any role in the miner's impairment. In view of his recognition of the appropriate standard, we take his references to contribution as addressing whether the Miner's pulmonary or respiratory impairment was significantly related to or substantially aggravated by coal mine dust exposure.

dust exposure. Decision and Order at 18; *see Young*, 947 F.3d at 405-09; *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017); *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013).

Similarly, Dr. Mumma opined the Miner had COPD related to cigarette smoking, and did not have a "coal mine dust-induced coal workers' disease." Employer's Exhibit 3 at 12. Contrary to Employer's assertion, the administrative law judge permissibly found Dr. Mumma did not explain why coal dust exposure did not significantly relate to or substantially aggravate the Miner's chronic lung disease. *See Young*, 947 F.3d at 405-09; *Stallard*, 876 F.3d at 673-74 n.4 (administrative law judge permissibly discredited medical opinions that "solely focused on smoking" as a cause of obstruction and "nowhere addressed why coal dust could not have been an additional cause"); Decision and Order at 20.

We also reject Employer's assertion that the administrative law judge was required to defer to Dr. Mumma based on his status as the Miner's treating physician.[13] Employer's Brief at 23-24. An administrative law judge is not required to accord greater weight to a treating physician's opinion if it is not adequately reasoned. *See* 20 C.F.R. §718.104(d)(5); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 513 (6th Cir. 2003) (it is incumbent upon the administrative law judge to determine whether the treating physician has provided a persuasive opinion entitled to deference); Decision and Order at 20. Because it is supported by substantial evidence, we affirm his finding that Dr. Mumma's opinion is inadequately reasoned. Decision and Order at 20.

Dr. Ghio opined Claimant's COPD is due to cigarette smoking and unrelated to coal mine dust exposure because pulmonary function testing revealed an "extreme" decrease in FEV1, which is not a pattern of impairment consistent with legal pneumoconiosis. Employer's Exhibit 1. Contrary to Employer's assertion, the administrative law judge permissibly found this rationale conflicts with the medical science set forth in the preamble that "coal miners have an increased risk of developing COPD . . . [that] may be detected from decrements in certain measures of lung function, especially FEV1 and the ratio of FEV1/FVC." 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); *see Sterling*, 762 F.3d at 491-92; *Stallard*, 876 F.3d at 671-72; *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 257 (3d Cir. 2011); Decision and Order at 19-20. Because it is supported by

[13] The administrative law judge correctly observed that while Dr. Mumma "worked at the Crooksville Family Clinic where the Miner sought treatment" and assumed care of him after Dr. Albirini's treatment ended in 2009, the "treatment records . . . show[ed] the Miner continued to also see other physicians in the office." Decision and Order at 20; Employer's Exhibit 3 at 5-6.

substantial evidence, we affirm the administrative law judge's discrediting of Dr. Ghio's opinion.[14]

Thus we affirm the administrative law judge's finding that Employer failed to disprove the Miner had legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 21. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis. Therefore, we affirm the administrative law judge's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i).

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). He rationally discounted the disability causation opinions of Drs. Altmeyer, Mumma, and Ghio because none of these physicians diagnosed legal pneumoconiosis, contrary to his finding that Employer failed to disprove the existence of the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 21-22. We therefore affirm the administrative law judge's finding that Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii), and the award of benefits in the miner's claim.

The Survivor's Claim

Having awarded benefits in the miner's claim, the administrative law judge found Claimant satisfied her burden to establish each fact necessary to demonstrate entitlement under Section 422(*l*) of the Act: she filed her claim after January 1, 2005; she is an eligible survivor of the Miner; her claim was pending on or after March 23, 2010; and the Miner was determined to be eligible to receive benefits at the time of his death. 30 U.S.C. §932(*l*) (2018); Decision and Order at 22-23.

We reject Employer's argument that the administrative law judge's application of Section 422(*l*) was erroneous because the Miner's award of benefits was not yet final. The Board has rejected that argument and has held that an award of benefits in a miner's claim

[14] Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Altmeyer, Mumma, and Ghio, any error in discrediting their opinions for other reasons is harmless. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Therefore, we need not address Employer's remaining arguments regarding the weight accorded to their opinions. Employer's Brief at 14-25.

need not be final for a claimant to receive benefits under Section 422(*l*). *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141, 1-145-47 (2014). We decline Employer's request to reconsider the Board's holding in *Rothwell*.

Because we have affirmed the award of benefits in the miner's claim, we affirm the administrative law judge's determination that Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*). 30 U.S.C. §932(*l*) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits in the Miner's Claim and Granting Automatic Entitlement in the Survivor's Claim is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge