**U.S. Department of Labor**

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

BRB No. 22-0142 BLA

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| JOSIE L. WRIGHT<br>(Widow of TEDDY B. WRIGHT)<br><br>Claimant-Respondent<br><br>v.<br><br>CAM MINING, LLC<br><br>and<br><br>ROCKWOOD CASUALTY INSURANCE COMPANY<br><br>Employer/Carrier-Petitioners<br><br>DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR<br><br>Party-in-Interest | ) | DATE ISSUED: 8/09/2023<br><br>DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits in a Modification of a Survivor's Claim of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

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

Denise Hall Scarberry (Baird & Baird, P.S.C.), Pikeville, Kentucky, for Employer and its Carrier.[1]

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Larry S. Merck's Decision and Order Awarding Benefits in a Modification of a Survivor's Claim (Decision and Order on Modification) (2020-BLA-05104) pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a request for modification of a survivor's claim filed on August 28, 2017.

In a Proposed Decision and Order – Denial of Benefits dated September 28, 2018, the district director found Claimant[2] failed to establish the Miner's death was due to pneumoconiosis. Director's Exhibit 42. On September 11, 2019, Claimant timely requested modification of that denial. Director's Exhibit 48. In a Proposed Decision and Order – Denying Request for Modification dated January 23, 2020, the district director found Claimant failed to establish a mistake in a determination of fact. Director's Exhibit 56. Following Claimant's request for a hearing, the case was transferred to the Office of Administrative Law Judges and assigned to ALJ Merck (the ALJ). Director's Exhibits 62, 65-67.

[1] Employer and its carrier (Employer) were previously represented by Jones & Jones Law Office, PLLC, which filed the Petition for Review and Brief. After the briefing schedule in this appeal closed, but prior to a decision in the case, Jones & Jones filed a Motion to Withdraw as Counsel and Request an Extension of all Deadlines. Baird and Baird, P.S.C., subsequently entered its appearance as counsel for Employer. The Benefits Review Board grants Jones & Jones's request to withdraw but denies the request to extend the deadlines in this case as Employer filed a brief, the briefing schedule has long since closed, and Employer has not explained why an extension of the deadlines is necessary.

[2] Claimant is the widow of the Miner, who died on July 19, 2017. Director's Exhibit 18. The Miner never successfully established entitlement to benefits during his lifetime. Thus, Claimant is not entitled to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

In his December 14, 2021 Decision and Order on Modification, the ALJ found Claimant established the Miner had twenty-eight years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, he found Claimant invoked the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption, Claimant established modification based on a mistake in a determination of fact at 20 C.F.R. §725.310, and granting modification would render justice under the Act. Thus he awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption.[4] It also argues he erred in finding it failed to rebut the presumption. Claimant responds in support of the award. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board's scope of review is defined by statute. We must affirm the ALJ'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 Assocs., Inc.*, 380 U.S. 359 (1965).

**Modification**

The sole ground for modification in a survivor's claim is that a mistake in a determination of fact was made in the prior decision. *See* 20 C.F.R. §725.310(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989). An ALJ has broad discretion to grant modification based on a mistake of fact, including the ultimate fact of entitlement to benefits. *See Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230 (6th Cir. 1994); *Nataloni v. Director, OWCP*, 17 BLR 1-82, 1-84 (1993). Moreover, a party need not submit new evidence on modification because an ALJ is authorized "to correct mistakes

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's death was 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 at the time of his death. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-eight years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Modification at 3.

[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 Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 25.

of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971).

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

To invoke the Section 411(c)(4) presumption, 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)(i). A 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 and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). 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 ALJ 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); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found Claimant established total disability based on the arterial blood gas study evidence and the evidence as a whole.[6] 20 C.F.R. §718.204(b)(2)(ii); Decision and Order on Modification at 9-18.

**Arterial Blood Gas Studies**

The ALJ considered two arterial blood gas studies dated February 5, 2014, and July 3, 2014.[7] Decision and Order on Modification at 9-11. The February 5, 2014 study

[6] The ALJ found Claimant did not establish total disability based on the pulmonary function studies, or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order on Modification at 8-9, 11.

[7] The ALJ incorrectly stated the July 3, 2014 arterial blood gas study was administered on June 30, 2014. Decision and Order on Modification at 9, 10; Director's Exhibit 21 at 15. This appears to be scrivener's error, as the Miner did not perform a blood gas study on June 30, 2014, and the ALJ correctly noted Dr. Vuskovich reviewed the July 3, 2014 arterial blood gas study. Decision and Order on Modification at 12 n.46; Employer's Exhibit 2 at 4, 6-7, 9. Thus, any error in misidentifying the July 3, 2014 study is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

produced non-qualifying[8] values at rest and no exercise study was conducted, while the July 3, 2014 study produced qualifying values at rest and no exercise study was conducted. Director's Exhibits 21 at 15; 23. The ALJ found the qualifying July 3, 2014 study "technically valid" and reliable and entitled to greater weight than the non-qualifying February 5, 2014 study based on its recency. Decision and Order on Modification at 10-11. He thus found the blood gas study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order on Modification at 10-11.

Employer argues the ALJ erred in finding the July 3, 2014 blood gas study established total disability because it does not comply with the quality standards. Employer's Brief at 5-7. It asserts the ALJ erred in finding "the test was not administered during a hospitalization that ended in [the Miner's] death nor that the test [was] performed during or soon after an acute respiratory or cardiac illness." *Id*. at 5. We disagree.

It is within the ALJ's discretion, as the trier of fact, to determine the weight and credibility to accord the medical evidence. *See Mabe v. Bishop Coal Co.*, 9 BLR 1-67, 1-68 (1986). When weighing arterial blood gas studies developed by any party, an ALJ must determine whether they are in substantial compliance with the regulatory quality standards. 20 C.F.R. §§718.101(b), 718.105(c); 20 C.F.R. Part 718, Appendix C; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc); *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984) (party challenging the validity of a study has the burden to establish the results are unreliable). If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b).

The quality standards do not apply to blood gas studies conducted as part of a miner's treatment and not in anticipation of litigation. 20 C.F.R. §§718.101, 718.105; *see J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-92 (2010) (quality standards "apply only to evidence developed in connection with a claim for benefits" and not to testing included as part of a miner's treatment). The ALJ must nevertheless determine if the treatment record blood gas study is sufficiently reliable to support a finding of total disability, despite the inapplicability of the specific quality standards. 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000).

The record reflects that the July 3, 2014 blood gas study was developed as a part of the Miner's treatment and not in anticipation of litigation, and it is thus not subject to the

[8] A "qualifying" arterial blood gas study yields values that are equal to or less than the applicable table values contained in Appendix C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(ii).

quality standards. Director's Exhibit 21 at 15. The ALJ acknowledged the July 3, 2014 study "does not comply with the regulatory quality standards" and that he "must determine whether the test is sufficiently reliable . . . ." Decision and Order on Modification at 10; *see* 20 C.F.R. Part 718, App. C; 20 C.F.R. §718.204(b)(2)(ii). He stated the July 3, 2014 study was administered at the Pikeville Medical Center during "an evaluation related to advice on possible treatments for [the Miner's] obstructive jaundice and pancreatic masses revealed through [computed tomography] scans." Decision and Order on Modification at 10-11. In addition, he stated the Miner had a history of chronic obstructive pulmonary disease and chronic cough and had "presented at this same medical facility [eight] weeks previously after experiencing shortness of breath." *Id*. at 11. Moreover, the Miner died on July 19, 2017, three years after he performed the July 3, 2014 arterial blood gas study. Director's Exhibits 18; 21 at 15. Thus, contrary to Employer's assertion, the ALJ reasonably determined the study was neither "administered during a hospitalization that ended in the Miner's death" nor "performed during or soon after an acute respiratory or cardiac illness." Decision and Order on Modification at 11; *see* 20 C.F.R. §718.105(d), (e); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). Further, he reasonably found there is no evidence that contradicts the reliability of the study as "Employer offers only Dr. Vuskovich's opinion that [the study] results are qualifying for reasons other than coal worker's (sic) pneumoconiosis" and the doctor "did not question the reliability of the test results." Decision and Order on Modification at 11. Consequently, we affirm the ALJ's finding that the July 3, 2014 blood gas study is reliable. *See Mabe*, 9 BLR at 1-68.

We also reject Employer's argument that the ALJ erred in crediting the July 3, 2014 qualifying blood gas study as a more recent representation of the Miner's respiratory condition than the February 5, 2014 blood gas study. Employer's Brief at 6-7. Contrary to Employer's argument, the ALJ did not make a bare appeal to recency in finding the blood gas studies establish total disability; rather, he performed the requisite "quantitative and qualitative" analysis of the evidence.[9] *See Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993); *Sunny Ridge Min. Co. v. Keathley*, 773 F.3d 734, 740 (6th Cir. 2014); *see also Thorn v. Itmann Coal Co.*, 3 F.3d 713, 718 (4th Cir. 1993) ("[a] bare appeal

[9] Employer states that it "assumes" the ALJ based his finding solely on recency because the ALJ did not "specifically indicate" why he gave more weight to the qualifying July 3, 2014 study than the non-qualifying February 5, 2014 study. However, as explained herein, the ALJ satisfied the Administrative Procedure Act (APA) by setting forth his reasons for giving greater weight to the July 3, 2014 study. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (if a reviewing court can discern what the ALJ did and why he did it, the duty of explanation under the APA is satisfied).

to 'recency' is an abdication of rational decisionmaking"). And while Employer alleges that the nonqualifying February 5, 2014 study and the qualifying July 3, 2014 study should be given equal weight because they were conducted only five months apart, the ALJ specifically found that the July 3, 2014 study came after the Miner's admission "[to] the same medical facility [eight] weeks previously [for] shortness of breath" and that Employer's own medical expert, Dr. Vuskovich, questioned the cause of the Miner's impairment on the study, but did not question the study as being an accurate reflection of the Miner's respiratory condition. Decision and Order at 11-12 (summarizing Dr. Vuskovich's opinion that the Miner was not totally disabled as of the February 5, 2014 study, but had developed hypoxemia as of the July 3, 2014 study). Thus, substantial evidence supports the ALJ's decision to accord greater weight to the July 3, 2014 study as a more accurate representation of the Miner's respiratory condition. It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-77 (6th Cir. 2013); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 482-83 (6th Cir. 2012); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). The Board is not empowered to reweigh the evidence or substitute its inferences for those of the ALJ. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We thus affirm the ALJ's determination that the weight of the arterial blood gas study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order on Modification at 11.

**Treatment Records**

Employer argues the ALJ made "irrational and contradictory" statements in characterizing the Miner's treatment records. Employer's Brief at 7-9.

The ALJ noted the treatment records identified multiple diagnoses and related information pertaining to the Miner's respiratory or pulmonary condition, including "the Miner's complaints of shortness of breath, the qualifying [arterial blood gas study] results, and the continuing prescription and use of Albuterol inhalers." *Id*. Further, he noted the treatment records detailed the Miner's frequent bouts of upper respiratory infections, asthma, and chronic bronchitis; continuous prescriptions for inhalers; and diminished lung function while under hospice care. But the ALJ also noted that the treatment records do not state the physicians' understanding of the Miner's usual coal mine job and its exertional requirements or whether his pulmonary condition would prevent him from performing his usual coal mine job. *Id*. Thus, although the various diagnoses in the treatment records "support a determination that the Miner had [a] significant pulmonary or respiratory

impairment consistent with a finding of total disability," the ALJ nevertheless found the records are "insufficient to establish total disability." *Id.*

As Employer does not allege that the treatment records undermine the qualifying results of the July 3, 2014 arterial blood gas study, it has failed to explain how the error it alleges would make a difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

Thus, we affirm, as supported by substantial evidence, the ALJ's determination that the contrary medical evidence does not undermine his finding that Claimant established total disability based on the arterial blood gas study evidence. 20 C.F.R. §718.204(b)(2) (qualifying arterial blood gas studies "shall establish" total disability "[i]n the absence of contrary probative evidence"); Decision and Order on Modification at 18. Because there is no evidence undermining the qualifying arterial blood gas study evidence, we further affirm the ALJ's finding that Claimant established total disability, 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; Decision and Order on Modification at 18, and thus invoked the Section 411(c)(4) presumption, 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

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

Because Claimant invoked the Section 411(c)(4) presumption of death due to pneumoconiosis in her survivor's claim, the burden shifted to Employer to establish that the Miner had neither legal nor clinical pneumoconiosis,[10] or that "no part of [his] death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(i), (ii). The ALJ found Employer did not establish rebuttal by either method.

[10] "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 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).

**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), 718.305(d)(2)(i)(A); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, 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)).

The ALJ considered the medical opinion of Dr. Vuskovich that the Miner did not have legal pneumoconiosis and the Miner's treatment records.[11] Decision and Order on Modification at 26-27; Employer's Exhibit 2 at 9. He found Dr. Vuskovich's opinion not well-reasoned and documented. Decision and Order on Modification at 26. Further, he found "the relevant treatment records support a finding that the Miner had legal pneumoconiosis." *Id*. at 27. He thus concluded that neither the medical opinion evidence nor the treatment record evidence "aid" Employer in disproving the existence of legal pneumoconiosis. *Id*. at 26-27.

Employer does not allege specific error in the ALJ's discrediting of Dr. Vuskovich's opinion on the issue of legal pneumoconiosis. Employer's Brief at 9. Thus we affirm this credibility finding. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 109 (1983); 20 C.F.R. §802.211(b); Decision and Order on Modification at 26-27.

Because the ALJ acted within his discretion in discrediting Dr. Vuskovich's opinion, the only medical opinion supportive of Employer's burden, we affirm his finding

[11] The ALJ noted the Miner's treatment records from May 18, 2005 to November 30, 2014 describe that the Miner "exhibited symptoms of asthma, bronchitis, and chronic obstructive pulmonary disease . . . ." Decision and Order on Modification at 27. He also noted Dr. Coleman, the Miner's treating physician, opined his "frequent bronchitis in 2008 was most likely connected to [his] coal mine employment, concluding that his condition 'is probably pneumoconiosis' because [he] 'never smoked, but work[ed] in the mines for [over] 20 years." *Id*. (citing Claimant's Exhibit 4 at 53).

that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(2)(i)(A); Decision and Order on Modification at 26-27. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis.[12] Therefore, we affirm the ALJ's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(2)(i).

**Death Causation**

The ALJ next considered whether Employer established "no part of the [M]iner's death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(ii); Decision and Order on Modification at 27-28. Contrary to Employer's argument, the ALJ permissibly discredited Dr. Vuskovich's death causation opinion because the doctor did not diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove the Miner had the disease.[13] *See Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order on Modification at 27-28; Director's Exhibit 24; Employer's Brief at 9-10. We therefore affirm the ALJ's finding that Employer failed to establish no part of the Miner's death was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(2)(ii).

Thus we affirm the ALJ's findings that Employer did not rebut the Section 411(c)(4) presumption, 20 C.F.R. §718.305(d)(2), and that Claimant therefore established a mistake in a determination of fact. 20 C.F.R. §725.310; Decision and Order on Modification at 29. We further affirm, as unchallenged, the ALJ's finding that granting modification would render justice under the Act. *See Skrack*, 6 BLR at 1-711; Decision and Order on Modification at 29. Therefore, we affirm the award of benefits.

[12] Because we affirm the ALJ's findings on the issue of legal pneumoconiosis, we need not address the ALJ's findings on the issue of clinical pneumoconiosis. *Larioni*, 6 BLR at 1-1278; Employer's Brief at 20-26.

[13] Dr. Vuskovich opined the Miner's fatal metastatic pancreatic cancer did not arise in whole or in part out of his coal mine dust exposure. Director's Exhibit 24. He further opined the Miner's death was not caused, contributed to, or hastened in any way by coal workers' pneumoconiosis or any chronic lung disease arising out of his coal mine employment. *Id.*

Accordingly, the ALJ's Decision and Order Awarding Benefits in a Modification of a Survivor's Claim is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge