U.S. Department of Labor

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

BRB Nos. 22-0527 BLA
and 22-0528 BLA

BEVERLY A. MORROW (o/b/o and Widow of JOHN MORROW) Claimant-Petitioner v. OAK GROVE RESOURCES, LLC Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 8/23/2023 DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, District Chief Administrative Law Judge, United States Department of Labor.

John R. Jacobs and J. Thomas Walker (Maples Tucker & Jacobs, LLC), Birmingham, Alabama, for Claimant.

Kary Bryant Wolfe (Jones Walker LLP), Birmingham, Alabama, for Employer.

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

PER CURIAM:

Claimant appeals District Chief Administrative Law Judge (ALJ) Patrick M. Rosenow's Decision and Order (2020-BLA-05596, 2021-BLA-05077) 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 subsequent miner's claim filed on March 19, 2019,[1] and a survivor's claim filed on October 22, 2019.[2]

The ALJ credited the Miner with thirty-seven years of qualifying coal mine employment based on the parties' stipulations and found he had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore determined Claimant invoked the presumption that the Miner was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4), and established a change in an applicable condition of entitlement.[4] However, the ALJ found Employer

[1] The Miner filed two prior claims. Miner's Claim (MC) Director's Exhibits 1, 2. The district director denied his previous claim on November 15, 2016, because the evidence did not establish total disability or total disability due to pneumoconiosis. MC Director's Exhibit 2.

[2] Claimant is the widow of the Miner, who died on September 11, 2019. Survivor's Claim (SC) Director's Exhibit 10. She is pursuing the miner's claim as well as her own survivor's claim. SC Director's Exhibit 2.

[3] 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.

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the district director denied the Miner's prior claim for failure to establish total disability, which necessarily precludes a finding of total disability due to pneumoconiosis, Claimant was required to submit new evidence establishing the Miner was totally disabled

rebutted the presumption by establishing the Miner did not have pneumoconiosis and denied benefits in the miner's claim. Having concluded the Miner did not have pneumoconiosis, the ALJ also found Claimant was unable to establish the Miner's death was due to pneumoconiosis and denied benefits in the survivor's claim.[5] 20 C.F.R. §718.205(b).

On appeal, Claimant asserts the ALJ erred in finding Employer rebutted the Section 411(c)(4) presumption. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a substantive response.[6]

The Benefits Review 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.[7] 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).

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in order to warrant a review of the Miner's subsequent claim on the merits. *See White*, 23 BLR at 1-3; MC Director's Exhibit 2.

[5] The ALJ also noted that if Claimant invoked the rebuttable presumption that the Miner's death was due to pneumoconiosis under Section 411(c)(4), Employer would have necessarily rebutted it by proving the Miner did not have pneumoconiosis. Decision and Order at 17.

[6] We affirm, as unchallenged on appeal, the ALJ's findings that the Miner had thirty-seven years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment and therefore Claimant invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 13. Because Claimant invoked the Section 411(c)(4) presumption, she also established a change in an applicable condition of entitlement at 20 C.F.R. §725.309.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit because the Miner performed his coal mine employment in Alabama. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 5.

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,[8] 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)(2)(i), (ii). The ALJ found Employer rebutted the presumption that the Miner had clinical and legal pneumoconiosis. Decision and Order at 13-17.

Clinical Pneumoconiosis

To disprove clinical pneumoconiosis, Employer must establish the Miner did not have any of the 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. §§718.305(d)(1)(i)(B), 718.201(a)(1).

The ALJ found the x-ray readings entitled to no weight and that the computed tomography (CT) scan and medical opinion evidence were sufficient to rebut the presumption of clinical pneumoconiosis.[9] Decision and Order at 14-16. Claimant argues the ALJ erred in finding the CT scan evidence "overrule[d]" the positive x-ray evidence and that he generally erred in considering and weighing the evidence concerning clinical pneumoconiosis as a whole. Claimant's Brief at 2-10. We disagree.

[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). 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).

[9] The ALJ noted there was no autopsy or biopsy evidence in the record. Decision and Order at 14 n.52.

The ALJ considered three interpretations of the sole x-ray dated April 30, 2019.[10] Decision and Order at 3, 14-15. The ALJ noted all of the physicians who provided interpretations are dually-qualified B readers and Board-certified radiologists.[11] *Id.* at 3, 14; MC Director's Exhibits 20, 22; Employer's Exhibit 1; Claimant's Exhibit 1. Drs. Ahmed and Smith read the x-ray as positive for simple pneumoconiosis.[12] MC Director's Exhibit 20 at 14; Claimant's Exhibit 1. Dr. Meyer opined the x-ray was unreadable due to poor contrast and mottle. Employer's Exhibit 1. The ALJ gave the greatest weight to Dr. Meyer's determination that the April 30, 2019 x-ray was unreadable based on his additional credentials, which included "the recency of his several lectures, science and educational exhibits, and publications." Decision and Order at 14-15; Employer's Exhibit 1. In addition, the ALJ found Dr. Meyer's reading was supported by Dr. Lundberg's giving the film quality the next-lowest rating of "3" with "underexpose[ure]"[13] and that "the disparity in quality notations [was] so remarkable as to undermine the credibility" of Drs. Ahmed's and Smith's readings. Decision and Order at 15; MC Director's Exhibits 20, 23; Claimant's Exhibit 1. Thus the ALJ found the x-ray evidence entitled to no weight and, therefore, "Employer [could not] rely upon the x-ray evidence to carry its burden." Decision and Order at 15.

Claimant generally asserts the x-ray evidence is "preponderantly and overwhelmingly positive for coal workers' pneumoconiosis." Claimant's Brief at 9. The Board's limited scope of review requires a party challenging the Decision and Order below to address that decision and demonstrate why substantial evidence does not support the result reached or why it is contrary to the law. *See* 20 C.F.R. §§802.211(b), 802.301(a);

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[10] Dr. Lundberg read the April 30, 2019 x-ray for quality purposes only and determined it was quality "3," noting it was underexposed. MC Director's Exhibit 23.

[11] While Claimant did not submit Dr. Smith's curriculum vitae, the ALJ determined Dr. Smith was dually-qualified based on the information included with his x-ray reading. Decision and Order at 3 n.13; Claimant's Exhibit 1.

[12] Dr. Ahmed read the April 30, 2019 x-ray as quality "1," and Dr. Smith read it as quality "2." MC Director's Exhibit 20; Claimant's Exhibit 1.

[13] International Labour Organization guidelines set forth four quality ratings of 1, 2, 3, and unreadable. A 3 denotes the film has "some technical defect but [is] still adequate for classification purposes." *Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses* at 3 (rev. ed. 2011), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_168260.pdf

see also Sarf v. Director, OWCP, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). Here, the ALJ gave no probative weight to the April 30, 2019 x-ray readings based on the opinion of Dr. Meyer, whom the ALJ found had superior credentials, because he found the film unreadable, as supported by Dr. Lundberg, who gave the film the next-lowest quality rating of a "3" with a notation of underexposure. *See Harris v. Old Ben Coal Co*., 23 BLR 1-98, 1-114 (2006) (en banc), *aff'd on recon.*, 24 BLR 1-13 (2007) (en banc) (ALJ may rely on a reader's academic qualifications in radiology and his involvement in the B reader program as bases for according greater weight to the readings rendered by that reader); *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-302 (2003); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993); *Gober v. Reading Anthracite Co.*, 12 BLR 1-67, 1-70 (1988); *see generally Ferguson*, 920 F.3d at 1288; Decision and Order at 14-15. As Claimant does not identify any specific error in the ALJ's weighing of the x-ray evidence, we affirm it. *See Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 1-109; Decision and Order at 14-15.

The ALJ also considered other medical evidence, including Dr. Meyer's reading of the June 8, 2016 CT scan. 20 C.F.R. §718.107; Decision and Order at 7, 16. Dr. Meyer opined the CT scan showed no "findings of coal workers' pneumoconiosis." Employer's Exhibit 3. Thus, the ALJ concluded the June 8, 2016 CT scan weighed against a finding of clinical pneumoconiosis and supported Employer's burden on rebuttal. Decision and Order at 16. Contrary to Claimant's argument, the ALJ did not find that the negative CT scan reading "overrule[d]" the positive x-ray readings; rather, he found the x-rays entitled to no weight due to film quality and therefore did not support Employer's burden on rebuttal. Claimant's Brief at 1, 6-10; Decision and Order at 15-16. He separately considered the merits of the June 8, 2016 CT scan before weighing all of the evidence together, as discussed more fully below. Decision and Order at 16. As Claimant does not identify any specific error in the ALJ's determination that the CT scan evidence supports Employer in rebutting the presumption of clinical pneumoconiosis, we affirm it.[14] *See Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 1-109; Decision and Order at 16.

Finally, the ALJ considered the medical opinions of Drs. Barney and Rosenberg. Decision and Order at 4-6, 15. The ALJ noted Dr. Barney initially opined the Miner had simple pneumoconiosis based on his review of Dr. Ahmed's reading of the April 30, 2019 x-ray. MC Director's Exhibit 20 at 3-5. At his deposition, Dr. Barney reviewed additional evidence, including Dr. Meyer's reading of the June 8, 2016 CT scan and Drs. Meyer's, Smith's, and Lundberg's readings of the April 30, 2019 x-ray. Employer's Exhibit 8 at 49-56, 76-78. Dr. Barney stated he was "not sure how to interpret" the CT scan in light of the

[14] We note the ALJ found the Miner's "treatment records shed little light on the issue of the existence of pneumoconiosis." Decision and Order at 16.

other evidence and that it was possible the Miner could "theoretically" have had pneumoconiosis. *Id*. at 54-56. However, he subsequently agreed that the x-ray evidence did not refute the negative CT scan[15] and that, in the absence of clinical pneumoconiosis, the mild restrictive defect he diagnosed would have to be due to another cause. *Id.* at 77-78. The ALJ noted Dr. Barney's uncertainty when considering the new evidence at his deposition but found that he ultimately withdrew his diagnosis of clinical pneumoconiosis. Decision and Order at 4-6, 15.

Dr. Rosenberg opined the Miner did not have clinical pneumoconiosis. Employer's Exhibit 2 at 4. The ALJ found both physicians "credibly opined the Miner did not have clinical pneumoconiosis." Decision and Order at 15. He therefore determined the medical opinion evidence supports the conclusion that Employer rebutted the presumed existence of clinical pneumoconiosis. *Id.*

Initially, we note Claimant mischaracterizes Dr. Barney's deposition testimony in asserting he opined "that despite the CT scan, he still could not rule out pneumoconiosis." Claimant's Brief at 10. While Dr. Barney expressed uncertainty with respect to how to interpret the fact that the Miner "doesn't have [clinical pneumoconiosis] radiographically on [the] CT scan," he never testified he could not "rule out" clinical pneumoconiosis; rather, in response to a line of questions, Dr. Barney suggested he could not "rule out" coal mine dust as a cause of the Miner's impairment reflected on pulmonary function testing, but stated it is "challenging" to "make the link." Employer's Exhibit 8 at 55, 83-84. These comments bear upon the separate question of whether the Miner had legal pneumoconiosis, i.e., a lung disease or impairment significantly related to or substantially aggravated by coal mine dust exposure. 20 C.F.R. §718.201(a)(2), (b).

Additionally, contrary to Claimant's contention, it was not "improper" for the ALJ to take into consideration Dr. Barney's review of Dr. Meyer's reading of the June 8, 2016 CT scan.[16] Claimant's Brief at 6, 10. Pursuant to 20 C.F.R. §718.202(a)(4), the ALJ

[15] Dr. Barney stated that CT scans are "a more superior way to look at the lungs" and that the Miner "would've likely had radiographic pneumoconiosis by 2016 because . . . his dose exposure ha[d] already happened." Employer's Exhibit 8 at 53.

[16] There is no merit to Claimant's assertion that Dr. Barney's opinion should be given less weight than Drs. Ahmed's and Smith's because he is not a B reader or a Board-certified radiologist. Claimant's Brief at 10. Dr. Barney did not provide a reading of the June 8, 2016 CT scan or the April 30, 2019 x-ray; rather, he reviewed the same x-ray readings and CT scan reading as the ALJ and provided a medical opinion based on his

properly considered Dr. Barney's medical opinion, which was based on his prior examination of the Miner and his review of the objective evidence, including Dr. Meyer's reading of the CT scan. Decision and Order at 4-6, 15; MC Director's Exhibit 20; Employer's Exhibit 8 at 49-56, 76-78. As the trier-of-fact, the ALJ has discretion to assess the credibility of the evidence based on the documentation underlying a physician's opinion and the explanations given to support the medical findings. *See U.S. Steel Mining Co. v. Director, OWCP* [*Jones*], 386 F.3d 977, 992 (11th Cir. 2004); *see also Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013); *Hicks*, 138 F.3d at 533; *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). As we see no error in the ALJ's consideration of Dr. Barney's medical report and deposition, and the underlying evidence, we affirm the ALJ's finding that Dr. Barney withdrew his diagnosis of clinical pneumoconiosis. Decision and Order at 15.

We further reject Claimant's assertion that Dr. Rosenberg "unexplainably [threw] out the chest x-ray evidence . . . ." Claimant's Brief at 10. Dr. Rosenberg summarized the evidence he considered, including Dr. Meyer's determination that the April 30, 2019 x-ray was unreadable, and noted that while there were some positive x-ray interpretations in the record, the CT scan showed "no interstitial lung disease" and CT scans "are orders of magnitude more accurate than chest X-rays." Employer's Exhibit 2 at 1-4. He also explained that although the Miner had a restrictive impairment, it related to "extrinsic" factors like his obesity instead of "intrinsic" factors like scarring from interstitial lung disease. *Id*. at 4. Thus, the ALJ permissibly credited Dr. Rosenberg's opinion because it was consistent with the underlying evidence he considered, as well as the ALJ's determination that the x-ray evidence was entitled to no weight. *See Jones*, 386 F.3d at 992; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Crisp*, 866 F.2d at 185; Decision and Order at 5-6, 15. As Claimant identifies no other errors with the ALJ's weighing of Dr. Rosenberg's opinion, we affirm the ALJ's determination that it supports finding the Miner did not have clinical pneumoconiosis. *See Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 1-109; Decision and Order at 15.

We also reject Claimant's general contentions that the ALJ erred in weighing the evidence as a whole on clinical pneumoconiosis. Claimant's Brief at 5-10. As discussed above, the ALJ reviewed all of the relevant evidence and provided rational explanations for crediting and discrediting each piece of evidence. Decision and Order at 2-7, 13-16. Claimant's contentions amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

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review of the evidence and examination of the Miner. Decision and Order at 3-7, 14-16; MC Director's Exhibit 20; Employer's Exhibit 8.

Because it is supported by substantial evidence, we affirm the ALJ's determination that Employer rebutted the presumption that the Miner had clinical pneumoconiosis. *See Jones*, 386 F.3d at 992; *Hicks*, 138 F.3d at 528; Decision and Order at 14-16.

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

The ALJ considered the medical opinions of Drs. Barney[17] and Rosenberg[18] and concluded "[n]either physician diagnosed legal pneumoconiosis or any lung disease arising out of coal mine employment, and the record does not contain any such diagnosis or argument." Decision and Order at 4-6, 15. He therefore found Employer rebutted the existence of legal pneumoconiosis. *Id.* at 15-16.

[17] Dr. Barney conducted the Department of Labor complete pulmonary evaluation of the Miner on July 23, 2019, and diagnosed mild resting hypoxia and a reduced FVC value based on the Miner's blood gas and pulmonary function testing, pneumoconiosis, and obstructive sleep apnea. MC Director's Exhibit 20 at 3-4. He opined the Miner was totally disabled due to his shortness of breath and concluded the Miner's disability was due, in part, to coal mine dust exposure and obstructive sleep apnea. *Id.* at 4.

At his April 6, 2021 deposition, Dr. Barney reiterated that the Miner was totally disabled by his shortness of breath and restrictive defect. Employer's Exhibit 8 at 85. In response to a question asking whether he could "rule out coal mining" as the cause of the Miner's disability, Dr. Barney stated that only an autopsy could "rule out" coal mine dust exposure. *Id.* at 83. He further explained it is "challenging" to link the Miner's disability to his coal mine employment without radiographic evidence. *Id.* at 84. After discussing potential causes of the Miner's impairments, Dr. Barney stated that based on the "composite information," heart failure was the most likely cause of the Miner's disability. *Id.* at 84-86.

[18] Dr. Rosenberg conducted a review of medical records and opined the Miner did not have legal pneumoconiosis. Employer's Exhibit 2 at 5. Dr. Rosenberg further opined the Miner was not totally disabled but had impaired ventilation, a restrictive defect, and hypoxia caused by obesity, and he attributed the Miner's gas exchange abnormalities to his impaired heart function. *Id.* at 4-5.

Claimant correctly contends the ALJ failed to conduct the proper legal analysis. Claimant's Brief at 11-12; Decision and Order at 15. In order to disprove legal pneumoconiosis, Employer has the burden to affirmatively prove that it is more likely than not that the Miner's thirty-seven years of coal mine dust exposure did not "significantly contribute to, or substantially aggravate," his restrictive impairment or hypoxia. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich*, 25 BLR at 1-155 n.8; *see also Oak Grove Res., LLC v. Director, OWCP* [*Ferguson*], 920 F.3d 1283, 1287-88 (11th Cir. 2019); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); Decision and Order at 15-16. The ALJ was specifically required to consider the credibility of Employer's evidence, addressing whether Dr. Rosenberg's opinion on the cause of the Miner's respiratory impairment is reasoned and documented, and persuasive.[19] Because the ALJ failed to properly consider whether Employer satisfied its burden of proof, we vacate the ALJ's finding that Employer rebutted the presumption of legal pneumoconiosis. Decision and Order at 15-16.

Consequently, we vacate the ALJ's denial of benefits in the miner's claim. As the ALJ's findings in the miner's claim were determinative of his conclusion that Claimant did not establish the Miner's death was due to pneumoconiosis, we also vacate the ALJ's denial of benefits in the survivor's claim.

Remand Instructions

On remand, the ALJ must reconsider whether Employer has rebutted the presumed existence of legal pneumoconiosis. Specifically, the ALJ must determine whether the medical opinions are adequately reasoned and documented, and persuasive, to 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)(1)(i)(A); *see Minich*, 25 BLR at 1-155 n.8.

If the ALJ determines Employer has disproven legal pneumoconiosis, Employer will have rebutted the Section 411(c)(4) presumption by establishing the Miner did not have pneumoconiosis and the ALJ need not reach the issue of disability causation. If the ALJ finds Employer has not disproven legal pneumoconiosis, he must reconsider whether

[19] The ALJ would similarly need to render a finding as to the credibility of Dr. Barney's opinion if he finds it constitutes evidence that the Miner did not have legal pneumoconiosis. While Claimant argues Dr. Barney's opinion does not support Employer's burden on rebuttal, Claimant's Brief at 11-12, the ALJ must consider the evidence in the first instance.

Employer has established that no part of the Miner's total disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

If Employer is unable to rebut the Section 411(c)(4) presumption, Claimant will have established the Miner was entitled to benefits at the time of his death and Claimant would be entitled to derivative survivor benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[20] If Employer rebuts the Section 411(c)(4) presumption in the miner's claim, she is not derivatively entitled, so the ALJ will then need to reconsider whether she established entitlement in her survivor's claim without Section 422(*l*).

In reaching his conclusions on remand, the ALJ must explain the bases for his credibility determinations, findings of fact, and conclusions of law as the Administrative Procedure Act (APA)[21] requires. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[20] Section 422(*l*) of the Act provides that the survivor of a miner who was 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). Employer stipulated that Claimant is the Miner's surviving spouse. Hearing Transcript at 7-8.

[21] The APA provides every adjudicatory decision must include "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).

Accordingly, the ALJ's Decision and Order is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge