U.S. Department of Labor

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

BRB No. 21-0215 BLA

CAROLYN V. WILES (Widow of CHARLES D. WILES) Claimant-Respondent v. METTIKI COAL CORPORATION and MAPCO, INCORPORATED Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 12/22/2022 DECISION and ORDER

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

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

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

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order on Modification Awarding Benefits (2020-BLA-05419) rendered on a claim filed 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 denial of a survivor's claim filed on August 4, 2010.[1]

[1] Claimant is the widow of the Miner, who died on May 21, 2004. Director's Exhibit 1 at 360 (unpaginated). Because the Miner was not awarded benefits on a claim filed prior to his death, Claimant is not eligible for benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018), which provides that a 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. 30 U.S.C. §932(*l*).

Claimant filed a survivor's claim on August 4, 2010. Director's Exhibit 1 at 375 (unpaginated). The district director issued a Proposed Decision and Order Denying Benefits on March 22, 2011. *Id.* at 15 (unpaginated). Claimant requested modification of the denial on April 3, 2012, which was received on April 9, 2012. *Id.* at 4 (unpaginated). The district director, however, found the modification request untimely and administratively closed the claim. *Id.* at 3 (unpaginated). Claimant filed another application for benefits on May 28, 2015. Director's Exhibit 3. In response, the district director issued an Order to Show Cause as to why the claim should not be denied as a subsequent survivor's claim. Director's Exhibit 9. Claimant responded that her modification request filed on April 3, 2012, was incorrectly found to be untimely filed. Director's Exhibit 10. The district director agreed with Claimant and construed her 2015 filing as a request for modification of the prior denial. Director's Exhibit 16. Thereafter, Claimant's request for modification was denied. Director's Exhibit 17. After another modification request and denial, the case was referred to the Office of Administrative Law Judges and a hearing was held before ALJ Natalie A. Appetta. Director's Exhibits 18, 21-22, 25.

ALJ Appetta issued a Decision and Order Denying Benefits on September 17, 2018, construing the case before her as a subsequent survivor's claim, but finding the case's disposition made no difference in the outcome and Claimant established no element of entitlement. Director's Exhibit 32. Claimant requested modification of ALJ Appetta's decision, leading to a hearing before ALJ Swank, whose Decision and Order is the subject of this appeal. Director's Exhibits 26, 29. ALJ Swank determined the claim was a modification request of the original survivor's claim filed on August 4, 2010. Decision

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

On appeal, Employer argues the ALJ erred in finding Claimant established the Miner had fifteen years of coal mine employment necessary to invoke the Section 411(c)(4) presumption. Employer further contends the ALJ erred in finding Claimant established the Miner was totally disabled. Alternatively, it argues the ALJ erred in finding it did not rebut the presumption. Claimant filed a response brief, urging affirmance of the ALJ's award. The Director, Office of Workers' Compensation Programs, has not filed a response.

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.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assoc., Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(4) Presumption: Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner worked at least fifteen years in underground coal mine employment or in "substantially

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and Order at 7-8. The parties have not challenged the ALJ's procedural determination; thus, it is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[2] 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 impairment at the time of his death. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner performed his last coal mine employment in Maryland. *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 25 at 93-95; Decision and Order at 11.

similar" surface mine employment.[4] 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years the Miner worked in coal mine employment. *See Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

The ALJ considered Claimant's hearing testimony, the Miner's Social Security Administration (SSA) earnings record, and the CM-911a Claim for Benefits forms. Decision and Order at 9-10; 2018 Hearing Tr. at 14-15; Director's Exhibits 1 at 365-70 (unpaginated); 5. For the years prior to 1978, the ALJ credited the Miner with a quarter-year of employment for each quarter in which his SSA earnings records indicate he earned at least $50.00 from coal mine operators. Decision and Order at 9 (citing *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984). Using this method, the ALJ credited the miner with thirty-one quarters, or 7.75 years, of coal mine employment from 1966 through 1976.[5] Decision and Order at 9. The ALJ also credited the Miner with seven years of coal mine employment for 1979 through 1985 with Mettiki Coal Corporation (Mettiki Coal) based on his "substantial" earnings during those years. *Id.* at 10. Further, the ALJ found an additional quarter of coal mine employment in 1986 based on the Miner's earnings of $4,782 in that year. *Id.* Combining these calculations, the ALJ found the Miner had fifteen years of coal mine employment. *Id.*

Employer argues the ALJ erred in his calculation of the number of years of the Miner's coal mine employment and failed to comply with the Administrative Procedure Act (APA).[6] Specifically, it argues the ALJ provided no analysis or explanation regarding

[4] We affirm, as unchallenged on appeal, the ALJ's finding that all the Miner's coal mine employment was performed underground. *Skrack*, 6 BLR at 1-711; Decision and Order at 10; 2020 Hearing Tr. at 14.

[5] While the ALJ indicates various start years for the Miner's coal mine employment (1966, 1969, and 1967), the Miner's Social Security Administration benefits record and form CM-911a reflect he began working for North Branch Coal Company in 1966. Decision and Order at 9, Director's Exhibits 1 at 365 (unpaginated); 5.

[6] The Administrative Procedure Act provides that 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).

which companies he considered in determining Miner's length of employment prior to 1978. Employer's Brief at 5. Employer states that some of the Miner's employers within that timeframe were not coal mining companies based on Claimant's testimony, which the ALJ did not address. *Id.* at 7. Employer further indicates the Miner had earnings from two different companies in the third quarter of 1969, but it is "impossible" to determine if the ALJ erroneously doubled the Miner's employment for that quarter in his calculation. *Id.* at 6-7. Finally, Employer argues the method of crediting a quarter-year of employment for $50.00 in earnings is "outdated and void." *Id.* at 6.

Initially, we reject Employer's assertion that the "quarterly method" should not be used in calculating the Miner's coal mine employment.[7] Both the United States Court of Appeals for the Fourth Circuit and the Board have held it is reasonable to credit a miner for any quarter in which the record shows earnings of at least $50.00 in coal mine employment. *Shrader v. Califano*, 608 F.2d 114, 117 n.3 (4th Cir. 1979) (income exceeding fifty dollars is "an appropriate yardstick for determining quarters which will be fully credited to a black lung claimant in determining the duration of his coal mine employment"); *Tackett,* 6 BLR at 1-841.

We also disagree that the ALJ did not explain which companies were included in his calculation for the years 1966 through 1976. The ALJ observed the Miner's coal mine employment for those years included work with North Branch Coal Company (North Branch) from 1966 to 1969, Island Creek Coal Company (Island Creek) from 1969 to 1973, and Kodiak Mining Company (Kodiak Mining) from 1975 to 1976. Decision and Order at 9. In addition, while the ALJ did not specifically reference Claimant's testimony regarding which of the Miner's employers were coal mining companies, the ALJ's finding, based on the CM-911a form, is consistent with her testimony.[8] Director's Exhibits 5;[9] 25 (2018 Hearing Tr. at 34-37). Thus, contrary to Employer's characterization, he did not "simply just state[] the miner is credited with 31 quarters." Employer's Brief at 5.

[7] We also reject Employer's argument that the ALJ must use only one method of calculation. The regulations provide that various methods may be used in calculating length of coal mine employment, depending on the available evidence. *See* 20 C.F.R. §725.101(a)(32)(iii) (the ALJ may use the formula provided if the beginning and ending dates cannot be determined or the length of employment lasted less than a calendar year).

[8] Claimant also testified she believed the Miner worked as a coal miner for "about 20 years." 2020 Hearing Tr. at 14.

[9] The ALJ refers to the CM-911a form as Director's Exhibit 3; however, it is before us at Director's Exhibit 5.

In addition, while Employer argues it is "impossible" to determine if the ALJ credited the Miner with two quarters of employment for the third quarter of 1969, it is evident from his findings that he did not. Counting every quarter from 1966 through 1976 in which the Miner earned at least $50.00 with North Branch, Island Creek, and Kodiak Mining results in thirty-two quarters. *See* Director's Exhibit 1 at 365 (unpaginated). However, the ALJ credited the Miner with only thirty-one quarters, thus demonstrating he excluded an extra quarter for the third quarter of 1969 in his calculation and permissibly found a total of 7.75 years of coal mine employment from 1966 to 1976. *See also 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 she did it, the duty of explanation under the APA is satisfied); *Shrader*, 608 F.2d at 117 n.3; *Tackett*, 6 BLR at 1-841.

As Employer does not challenge the ALJ's finding that the Miner had 7.25 years of coal mine employment with Mettiki Coal from 1979 to 1986, we affirm it.[10] We thus affirm the ALJ's finding that the Miner had 7.25 years of coal mine employment from 1979 to 1986. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10. Consequently, we affirm the ALJ's finding that Claimant established fifteen years of underground coal mine employment. Decision and Order at 10.

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

A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work. 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 ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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). The ALJ determined the Claimant established total disability by pulmonary function studies and the evidence as a whole.[11]

[10] Employer avers Claimant established 7.31 years of coal mine employment with Mettiki Coal, Employer's Brief at 6, more than the 7.25 years found by the ALJ. Decision and Order at 10.

[11] The ALJ found Claimant did not establish total disability based on the blood gas studies and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii)-(iii); Decision and Order at 16. He further determined the

The ALJ considered three pulmonary function studies, dated August 30, 1999, March 4, 2003, and January 15, 2004, all of which produced qualifying[12] values both before and after the administration of bronchodilators. Decision and Order at 14-15; Director's Exhibit 1 at 225-226, 229, 357 (unpaginated). The ALJ noted all three studies were performed during the course of the Miner's treatment and found them to be in "substantial compliance" with the quality standards in the regulations. Decision and Order at 14. He thus found the pulmonary function studies support a finding of totally disability. 20 C.F.R. §718.204(b)(1)(i); Decision and Order at 14.

Employer argues that the ALJ erred in relying on these pulmonary function studies because they are unreliable, asserting none of the studies comply with the quality standards at 20 C.F.R. §718.103 and Appendix B of 20 C.F.R. Part 718, and that the ALJ failed to note the August 30, 1999 study in particular was performed during a period of acute illness. Employer's Brief at 8-9. We disagree.

As an initial matter, Employer did not challenge the reliability of any of the pulmonary function studies either at the 2018 hearing or in its November 30, 2020 post-hearing brief.[13] Thus, Employer forfeited its right to object to the reliability of these studies for the first time in this appeal. *See Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-49 (1990); *Orek v. Director, OWCP*, 10 BLR 1-51, 1-54 (1987).

Regardless, pulmonary function studies conducted during the course of a miner's treatment are not subject to the quality standards set forth at 20 C.F.R. §718.103 and Appendix B. *J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-89, 1-92 (2008); 20 C.F.R. §718.101(b). In the absence of evidence to the contrary, compliance with the quality standards is presumed. 20 C.F.R. §718.103(c); *see also* 20 C.F.R. Part 718, App. B; *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 suspect or unreliable). Contrary to Employer's contention, the ALJ considered whether each study was in substantial compliance with the

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medical opinion evidence does not weigh against a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 21.

[12] A "qualifying" pulmonary function study yields results equal to or less than the applicable table values contained in Appendix B and C of 20 C.F.R. Part 718. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i).

[13] Employer only generally argued there is "absolutely no medical evidence" which would establish total disability and any evidence in the Miner's treatment records is "unreliable as it occurred near the end of his life." Employer's Post-Hearing Brief at 8.

regulations and determined they were.[14] *See Vivian*, 7 BLR at 1-361; Decision and Order at 14. As Employer fails to identify any expert medical opinion to the contrary,[15] we affirm the ALJ's finding that the pulmonary function study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 15.

The ALJ next considered the medical opinions of Drs. Caffrey and Vuskovich. Decision and Order at 17-21; Director's Exhibits 1, 25. The ALJ found neither physician specifically opined whether the Miner was totally disabled[16] and thus gave their opinions no weight. Decision and Order at 21. He observed, however, that both Drs. Caffrey and Vuskovich indicated the Miner had an "extensive" history of treatment for chronic obstructive pulmonary disease (COPD). *Id.*; Director's Exhibits 1 at 31-32 (unpaginated); 25 at 102. Further noting the Miner's treatment records document a long history of treatment for severe COPD, the ALJ determined the medical opinion evidence and the Miner's treatment records do not weigh against a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 21.

Employer argues the ALJ erred in finding the medical opinion evidence and the Miner's treatment records support the existence of a totally disabling impairment. Employer's Brief at 9-10. We disagree.

As the ALJ correctly observed, qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." Decision and Order at 13 n.12; 20 C.F.R. §718.204(b)(2). Contrary to Employer's contention, Employer's Brief at 9, the ALJ did not determine that the medical opinion evidence establishes or even weighs in favor of total disability, but rather permissibly determined the medical opinions "do not offer support for a contrary conclusion." Decision and Order at 21; *see Looney*, 678 F.3d at 316-17; *Island Creek Coal Co. v. Compton*, 211 F.3d 203,

[14] The ALJ was required to find whether or not the studies were "sufficiently reliable," not whether they were in "substantial compliance" with the regulations; we find the ALJ's application of the more exacting standard harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278 (1984).

[15] Dr. Vuskovich noted only that the Miner's treatment providers administered the August 30, 1999 pulmonary function study for "diagnostic-treatment purposes" and specifically opined the Miner "put forth the effort required to generate valid spirometry results." Director's Exhibit 25 at 113-114.

[16] While Dr. Vuskovich indicated the Miner had "spirometry measured obstructive ventilatory impairment," Dr. Caffrey did not address impairment. Director's Exhibits 25 at 112; 1 at 29 (unpaginated).

211 (4th Cir. 2000). As Employer does not challenge this determination, we affirm it. *Skrack*, 6 BLR at 1-711.

We further reject Employer's assertion that the ALJ erroneously determined the Miner's treatment records establish total disability. Employer's Brief at 10. The ALJ did not determine the treatment records establish total disability. Rather, he found Claimant established total disability based on the pulmonary function studies, and permissibly found this conclusion is supported by the treatment records documenting a "long history of treatment for severe and very severe obstructive lung disease." *See Looney*, 678 F.3d at 316-17; Decision and Order at 24.

We therefore affirm the ALJ's finding that all the relevant evidence, when weighed together, establishes total disability. *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 198; Decision and Order at 24. Because we have affirmed the ALJ's findings that Claimant established fifteen years of underground coal mine employment and a totally disabling respiratory impairment, we therefore affirm his determination that Claimant invoked the Section 411(c)(4) presumption. Decision and Order at 24.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish that the Miner had neither legal nor clinical pneumoconiosis,[17] 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.[18] Decision and Order at 31, 33.

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

[17] "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). "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).

[18] The ALJ found Employer disproved clinical pneumoconiosis. Decision and Order at 28.

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 Co.*, 25 BLR 1-149, 159 (2015).

The ALJ considered the opinions of Drs. Caffrey and Vuskovich, both of whom opined the Miner did not have legal pneumoconiosis but rather COPD and emphysema caused by smoking cigarettes and unrelated to coal mine dust exposure. Director's Exhibits 1 at 29 (unpaginated); Director's Exhibit 25 at 124. The ALJ found both opinions undermined and thus insufficient to rebut the existence of legal pneumoconiosis. Decision and Order at 30-31.

Employer alleges the ALJ applied an incorrect standard in discrediting Drs. Caffrey's and Vuskovich's opinions because he required the physicians to establish there was "no contribution" from coal mine dust to the Miner's disease, which is a "much more stringent" standard than the regulations require. Employer's Brief at 12. We disagree.

As the ALJ correctly observed, because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to rebut the presumed existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 24-25. He correctly noted this standard requires Employer prove the Miner's pulmonary impairment was not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 25 (quoting 20 C.F.R. §718.201(b)); *see Minich*, 25 BLR at 1-155.

Moreover, contrary to Employer's characterization of the ALJ's decision, the ALJ did not discredit Drs. Caffrey's and Vuskovich's opinions based on an incorrect standard. Rather, he permissibly found Dr. Caffrey's opinion inconsistent with the regulations, which do not require a positive x-ray in order to diagnose legal pneumoconiosis. *See Looney*, 678 F.3d at 313; 20 C.F.R. §718.202(a)(4), (b); 65 Fed. Reg. 79,920, 79,945 (Dec. 20, 2000); Decision and Order at 30; Director's Exhibit 1 at 31-32 (unpaginated). He likewise permissibly discredited Dr. Vuskovich's opinion because he based his opinion on an inaccurate understanding of the Miner's smoking history.[19] *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-89 (1993); *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988) (an ALJ may reject medical opinions that rely on an inaccurate smoking history). Decision and Order at 30-31.

[19] Dr. Vuskovich indicated the Miner had a smoking history of 150 pack-years, Director's Exhibit 25 at 124, whereas the ALJ found a smoking history of approximately sixty pack-years. Decision and Order at 11. As Employer does not challenge the ALJ's finding that the Miner had a smoking history sixty pack-years on appeal, we affirm it. *See Skrack*, 6 BLR at 1-111.

As the trier-of-fact, the ALJ is charged with assessing the credibility of the medical evidence and assigning it appropriate weight. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013); *Looney*, 678 F.3d at 314-15. Because it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed to establish the Miner did not have legal pneumoconiosis.[20] 20 C.F.R. §718.305(d)(2)(i).

Death Causation

The ALJ next considered whether Employer established "no part" of the Miner's death was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(2)(ii). The ALJ permissibly discredited the opinions of Drs. Caffrey and Vuskovich that the Miner's death was unrelated to legal pneumoconiosis because neither physician diagnosed the Miner with the disease, contrary to the ALJ's finding. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015) (physician who fails to diagnose legal pneumoconiosis, contrary to the ALJ's finding, cannot be credited on rebuttal of causation "absent specific and persuasive reasons"); *Toler v. Eastern Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 31-33. Therefore, we affirm the ALJ's finding that Employer failed to rebut the Section 411(c)(4) presumption by establishing no part of the Miner's death was caused by pneumoconiosis, 20 C.F.R. §718.305(d)(2)(ii), and the award of benefits.

Commencement Date for Benefits

Employer generally argues Claimant is not entitled to benefits dating back to May 2004, as the claim has been "repeatedly denied" and there is no mistake in the prior decisions. Employer's Brief at 13. Contrary to the Employer's argument, the ALJ found a mistake in fact in the prior decisions and granted modification. 20 C.F.R. §725.310; Decision and Order at 7, 32, 34. The applicable regulation provides "[b]enefits are payable to a survivor who is entitled beginning with the month of the miner's death, or January 1, 1974, whichever is later." 20 C.F.R. §725.503(c); *Dotson v. McCoy Elkhorn Coal Corp.*, 25 BLR 1-13, 1-18 (2011). Because it is supported by substantial evidence, we affirm the

[20] Employer further asserts the ALJ erred in his evaluation of the Miner's treatment records. Employer's Brief at 11. The ALJ noted the treatment records provide diagnoses of COPD but do not specifically opine as to the etiology of the disease. Decision and Order at 29. Thus, he found they neither proved nor disproved legal pneumoconiosis. *Id.* Because the ALJ found the treatment records do not disprove legal pneumoconiosis and thus do not support Employer's burden, we need not address Employer's argument that the ALJ erred in concluding the records are consistent with a diagnosis of legal pneumoconiosis. *See Larioni*, 6 BLR at 1-1278.

ALJ's finding that benefits commence in May 2004, the month and year in which the Miner died. 20 C.F.R. §725.503(b); Decision and Order at 34; Director's Exhibit 1 at 360 (unpaginated).

Accordingly, we affirm the ALJ's Decision and Order on Modification Awarding Benefits.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge