U.S. Department of Labor

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

BRB Nos. 19-0109 BLA
and 19-0268 BLA

MARLENE MULLINS (o/b/o and Widow of GREGORY N. MULLINS)	)	
Claimant-Respondent	)	
v.	)	
ISON COAL COMPANY, INCORPORATED	)	
	)	DATE ISSUED: 03/31/2020
and	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Lauren C. Boucher, Administrative Law Judge, United States Department of Labor.

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

Catherine A. Karczmarczyk (Penn, Stuart & Eskridge), Johnson City, Tennessee, for employer/carrier.

Ann Marie Scarpino (Kate S. O'Scannlain, 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: BUZZARD, ROLFE, and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2017-BLA-05028 and 2017-BLA-05029) of Administrative Law Judge Lauren C. Boucher rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's subsequent claim filed on January 22, 2015, and a survivor's claim filed on April 13, 2016.[1]

The administrative law judge found the miner had 16.25 years of underground or substantially similar surface coal mine employment and was totally disabled. She therefore found claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4),[2] and established a change in an applicable condition of entitlement at 20 C.F.R. §725.309.[3] She further found employer

[1] Claimant is the widow of the miner, who died on June 23, 2015. On May 18, 1998, the district director denied the miner's first claim, filed on May 27, 1997, because he failed to establish any element of entitlement. Director's Exhibit 1. The miner did not take any further action until he filed the current claim. Director's Exhibit 2. Claimant is pursuing the miner's claim on behalf of his estate and her survivor's claim. Director's Exhibit 26. The Board consolidated the appeals of both claims for purposes of decision only. *Mullins v. Ison Coal Co.*, BRB Nos. 19-0109 BLA and 19-0268 BLA (Mar. 26, 2019) (Order) (unpub.).

[2] Section 411(c)(4) of the Act presumes a miner was totally disabled due to pneumoconiosis if he had at least fifteen years of underground coal mine employment, or surface coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[3] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the

did not rebut the presumption and awarded benefits in the miner's claim. She also found claimant satisfied the eligibility criteria for automatic entitlement to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012),[4] and awarded benefits in the survivor's claim.

On appeal employer challenges the constitutionality of the Affordable Care Act (ACA), and the constitutionality and applicability of the Section 411(c)(4) presumption, enacted as part of the ACA. Employer also argues the administrative law judge lacked the authority to preside over these cases because she had not been appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2. Further, employer challenges the award of benefits, asserting the administrative law judge erred in finding claimant invoked the Section 411(c)(4) presumption by establishing at least fifteen years of qualifying coal mine employment. Claimant responds in support of the awards. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response urging the Board to reject employer's contention that the Section 411(c)(4) presumption is unconstitutional. The Director also argues the administrative law judge had authority to decide the case.[5]

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

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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). The miner's prior claim was denied because he did not establish any element of entitlement. Director's Exhibit 1. Consequently, to obtain review of the merits of the miner's claim, claimant had to establish one element of entitlement. 20 C.F.R. §725.309(c)(3), (4).

[4] 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 having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2012).

[5] We affirm, as unchallenged on appeal, the administrative law judge's findings that the miner was totally disabled and claimant established a change in an applicable condition of entitlement in the miner's claim. 20 C.F.R. §§718.204(b)(2), 725.309(c); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6-13.

supported by substantial evidence, and in accordance with applicable law.[6] 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).

Constitutionality of the ACA and the Section 411(c)(4) Presumption

Citing *Texas v. United States*, 340 F.Supp.3d 579, *decision stayed pending appeal*, 352 F.Supp.3d 665, 690 (N.D. Tex. 2018), employer contends the entirety of the ACA, which reinstated the Section 411(c)(4) presumption of total disability due to pneumoconiosis, is unconstitutional. Employer's Brief at 8-9. The Director responds that the district court stayed its ruling striking down the ACA, *Texas*, 352 F.Supp.3d at 690; thus, she argues the decision does not preclude application of the amendments to the Black Lung Benefits Act found in the ACA. Director's Brief at 6.

After the parties submitted their briefs, the United States Court of Appeals for the Fifth Circuit held one aspect of the ACA unconstitutional – the requirement that individuals maintain health insurance – but vacated and remanded the district court's determination that the remainder of the ACA must also be struck down as inseverable from that requirement. *Texas v. United States*, No. 19-10011, 2019 WL 6888446, at *27-28 (5th Cir. Dec. 18, 2019) (King, J., dissenting).[7] Moreover, the United States Court of Appeals for the Fourth Circuit has held that the ACA amendments to the Black Lung Benefits Act are severable because they have "a stand-alone quality" and are fully operative as a law. *W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 383 n.2 (4th Cir. 2011), *cert. denied*, 568 U.S. 816 (2012). Further, the United States Supreme Court upheld the constitutionality of the ACA. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012). We therefore reject employer's argument that the Section 411(c)(4) presumption is unconstitutional and inapplicable to this case.

Appointments Clause

This case was initially assigned to Administrative Law Judge Adele H. Odegard, who issued the Notice of Hearing and Pre-Hearing Order on January 9, 2018. On April 11,

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner's coal mine employment occurred in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 1.

[7] Furthermore, the Board has declined to hold cases in abeyance pending resolution of legal challenges to the ACA. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-26 (2011); *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-201 (2010).

2018, prior to the scheduled hearing, Judge Odegard transferred the case to Administrative Law Judge Lauren C. Boucher (the administrative law judge) for adjudication.

Employer notes the Supreme Court held in *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044 (2018) that Securities and Exchange Commission (SEC) administrative law judges were not properly appointed in accordance with the Appointments Clause[8] and argues the administrative law judge in this case was similarly appointed improperly.[9] Employer's Brief at 9-10. Further, employer argues the Secretary's ratification of her prior appointment on December 21, 2017, was insufficient to "cure the defect."[10] *Id.* at 10-12.

Employer's assertion lacks merit. As the Director correctly notes, on December 21, 2017, the Secretary appointed the administrative law judge outright and did not ratify any prior appointment.[11] Director's Brief at 4. Congress has authorized the Secretary to

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[8] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

[9] Employer twice raised this issue before the administrative law judge in a Motion to Hold Claims in Abeyance. The administrative law judge denied employer's motions, concluding that her appointment by the Secretary of Labor on December 21, 2017, effective March 19, 2018, foreclosed employer's argument. *Mullins v. Ison Coal Co.*, 2017-BLA-05028 and 2017-BLA 05029 (Apr. 25, 2018) (Order) (unpub.); *Mullins v. Ison Coal Co.*, 2017-BLA-05028 and 2017-BLA 05029 (May 8, 2018) (Order) (unpub.).

[10] The Department of Labor (DOL) has conceded that the Supreme Court's holding in *Lucia* applies to DOL administrative law judges. *See Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6; *see also Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044 (2018).

[11] The Secretary issued a letter to the administrative law judge on December 21, 2017 stating:

appoint administrative law judges to hear and decide cases under the Act. 30 U.S.C. §932a; *see also* 5 U.S.C. §3105; Director's Brief at 4. Moreover, the administrative law judge's appointment became effective March 19, 2018, prior to her assignment to this case. Therefore, we reject employer's argument that this case should be remanded for a new hearing before a new administrative law judge.

We also reject employer's argument to the extent it can be applied to Judge Odegard. As employer acknowledges, the Secretary ratified Judge Odegard's prior appointment on December 21, 2017.[12] Employer's Brief at 10. She issued the Notice of Hearing after the ratification of her appointment and employer does not allege, nor does the record reflect, that she took any action prior to the ratification. Further, contrary to employer's argument, the Secretary's ratification of Judge Odegard's appointment was proper under the Appointments Clause.

As the Director asserts, an appointment by the Secretary need only be "evidenced by an open, unequivocal act." Director's Brief at 4, *quoting Marbury v. Madison*, 5 U.S. 137, 157 (1803). Further, ratification "can remedy a defect" arising from the appointment of an official when an agency head "has the power to conduct an independent evaluation of the merits [of the appointment] and does so." *Wilkes-Barre Hosp. Co. v. NLRB*, 857

> In my capacity as head of the Department of Labor, and after due consideration, I hereby appoint you as an Administrative Law Judge in the Office of Administrative Law Judges. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, administrative law judges of the U.S. Department of Labor violate the Appointments Clause of the U.S. Constitution. This action is effective March 19, 2018.

Secretary's December 21, 2017 Letter to Administrative Law Judge Boucher.

[12] The Secretary issued a letter to Judge Odegard on December 21, 2017 stating:

> In my capacity as head of the Department of Labor, and after due consideration, I hereby ratify the Department's prior appointment of you as a District Chief Administrative Law Judge. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, administrative law judges of the U.S. Department of Labor violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's December 21, 2017 Letter to Administrative Law Judge Odegard.

F.3d 364, 371 (D.C. Cir. 2017) (internal quotations omitted); *see also McKinney v. Ozburn-Hessey Logistics, LLC*, 875 F.3d 333, 338 (6th Cir. 2017). Ratification is permissible so long as the agency head: 1) had at the time of ratification the authority to take the action to be ratified; 2) had full knowledge of the decision to be ratified; and 3) made a detached and considered affirmation of the earlier decision. *Wilkes-Barre*, 857 F.3d at 372; *Advanced Disposal Servs. E., Inc. v. NLRB*, 820 F.3d 592, 603 (3d Cir. 2016); *CFPB v. Gordon*, 819 F.3d 1179, 1191 (9th Cir. 2016). Under the "presumption of regularity," courts presume that public officers have properly discharged their official duties, with "the burden shifting to the attacker to show the contrary." *Advanced Disposal*, 820 F.3d at 603, *citing Butler v. Principi*, 244 F.3d 1337, 1340 (Fed. Cir. 2001).

The Secretary had, at the time of his ratification of Judge Odegard's prior appointment, the authority to take the action to be ratified. *Wilkes-Barre*, 857 F.3d at 372; *Advanced Disposal*, 820 F.3d at 603. Congress has authorized the Secretary to appoint administrative law judges to hear and decide cases under the Act. 30 U.S.C. §932a; *see also* 5 U.S.C. §3105. Under the presumption of regularity, we presume the Secretary had full knowledge of the decision to be ratified and made a detached and considered affirmation. *Advanced Disposal*, 820 F.3d at 603.

In evaluating the presumption, we note the Secretary did not generally ratify the appointment of all administrative law judges in a single letter. Rather, he specifically identified Judge Odegard and indicated he gave "due consideration" to her appointment. Secretary's December 21, 2017 Letter to Administrative Law Judge Odegard. The Secretary further stated he was acting in his "capacity as head of the Department of Labor" in ratifying Judge Odegard's appointment "as a District Chief Administrative Law Judge." *Id*. Employer does not assert the Secretary had no "knowledge of all the material facts" or that he did not make a "detached and considered judgement" when he ratified Judge Odegard's appointment, and therefore employer has not overcome the presumption of regularity. *Advanced Disposal*, 820 F.3d at 603-04 (mere lack of detail in express ratification is not sufficient to overcome the presumption of regularity); *see also Butler*, 244 F.3d at 1340.

Based on the foregoing, we hold that the Secretary's action constituted a proper ratification of the appointment of Judge Odegard. *See Edmond v. United States*, 520 U.S. 651, 654-66 (1997) (appointments to Coast Guard Court of Criminal Appeals valid where Secretary of Transportation "adopt[ed]" assignments "as judicial appointments of my own"); *Advanced Disposal*, 820 F.3d at 604-05 (National Labor Relations Board retroactively ratified appointment of Regional Director with statement it "confirm[ed], adopt[ed], and ratif[ied] nunc pro tunc" its earlier actions). Therefore, we reject employer's

argument that this case should be remanded for a new hearing before a different, constitutionally-appointed administrative law judge.[13]

The Miner's Claim – Invocation of the Section 411(c)(4) Presumption

Length of Coal Mine Employment

Because we have affirmed the administrative law judge's finding the miner had a totally disabling respiratory impairment, claimant is entitled to the Section 411(c)(4) presumption that the miner was totally disabled due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305. Claimant bears the burden of proof to establish the number of years the miner worked in coal mine employment. *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 administrative law judge's determination if it is based on a reasonable method of computation and supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The regulations define a "year" of coal mine employment as "a period of one calendar year (365 days, 366 days if one of the days is February 29), or partial periods

[13] Employer asserts, without argument, that "the administrative law judge's" "receipt of the Director's Exhibits and scheduling the claim for hearing" constitute "significant actions" that entitle it to a new hearing under *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044 (2018). Employer's argument lacks merit. While it is unclear which administrative law judge employer is referring to, our review of the record reflects Judge Odegard took no action in this case prior to the Secretary's ratification of her appointment which we have held was valid. Rather, she issued the Notice of Hearing and Pre-Hearing Order on January 9, 2018, and transferred this case to Judge Boucher on April 11, 2018, which was after Judge Boucher's appointment became effective. If Judge Boucher received the exhibits, she was indisputably properly appointed at the time. Even if Judge Odegard received the exhibits prior to ratification, that would not have tainted the adjudication entitling employer to a new hearing. *Lucia*, 138 S.Ct. at 2055. The required transfer of the Director's Exhibits to the administrative law judge does not involve any consideration of the merits and would not color the administrative law judge's consideration of the case. *See* 20 C.F.R. §725.455(b) (administrative law judge "shall receive into evidence . . . the evidence submitted to the Office of Administrative Law Judges [(OALJ)] by the district director"); *see also* 20 C.F.R. §725.421 (district director shall transmit evidence and related documents to the OALJ in any case referred for a hearing).

totaling one year, during which the miner worked in or around a coal mine or mines for at least 125 'working days.'" 20 C.F.R. §725.101(a)(32); *see Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007); *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003). The regulations permit an adjudicator to rely on a comparison of the miner's wages to the average daily earnings in the coal mining industry "[i]f the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year . . . ." 20 C.F.R. §725.101(a)(32)(iii). Thus, "to the extent the evidence permits," the fact-finder must first attempt to ascertain "the beginning and ending dates of all periods of coal mine employment . . . ." 20 C.F.R. §725.101(a)(32)(ii). If the requirement of a calendar-year period is met, "it must be presumed, in the absence of evidence to the contrary, that the miner spent 125 working days in such employment[,]" in which case the miner is entitled to credit for one full year of employment. *Id*.

The administrative law judge considered the miner's application, on which he alleged over twenty-two years of coal mine employment, and his employment history form, Social Security Administration (SSA) earnings record, and pay stubs. Decision and Order at 15-16; Director's Exhibits 2, 3, 5, 6. Specifically crediting the miner's SSA record and pay stubs as the most accurate evidence, the administrative law judge found he was engaged in coal mine employment from 1973 through 1986 and from 1988 through 1995. Decision and Order at 17.

Although she found there was insufficient evidence to determine the precise beginning and ending dates of his periods of employment, she relied on his SSA records and paystubs to find he was engaged in coal mine employment for either full calendar years or partial periods totaling more than a year in all of his employment.[14] 20 C.F.R.

[14] The administrative law judge explained claimant established the miner worked a calendar year in each year from 1974 through 1977 because his Social Security Administration (SSA) earnings records reflect that he earned significant income through coal mine employment, between $497.67 and $3,937.87 per quarter, during this period. Decision and Order at 17; Director's Exhibit 6. She found claimant established the miner worked a calendar year in 1989 and 1990 based on his continuous and exclusive employment with Indian Mountain Coal Co., Inc. from 1988 through 1991; and in 1992 through 1994 based on his continuous and exclusive employment with employer from 1991 through1995. Decision and Order at 17. She found the remaining years (1973, 1978 through 1986, 1988, 1991, and 1995) "constitute partial periods totaling more than one year." *Id*. at 18.

§725.101(a)(32); Decision and Order at 17-18. Because employer does not challenge this finding, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The administrative law judge then addressed whether the miner had 125 working days within each year of employment in order to be credited with a full year of coal mine work. 20 C.F.R. §718.101(a)(32); Decision and Order at 18. She divided the miner's yearly earnings, as reflected in his SSA earnings statement, by the average "daily" earnings for coal miners for each year as set forth in Exhibit 610 of the *Coal Mine* (*Black Lung Benefits Act*) *Procedure Manual*. *Id*. at 16-18. Based on this analysis, she found the miner had more than 125 working days in 1974, 1976 through 1978, 1981, 1990, and 1992-1995, for a total of 10 years of coal mine employment. Decision and Order at 18-19. She credited him with an additional 2 years of employment for 1975 and 1989 because claimant established he worked for the same employer for full calendar years and is entitled to a presumption he worked 125 days during each of those years.[15] She further found the miner's combined partial years of employment in 1973, 1978, 1980, 1982-1986, 1988, and 1991 equaled another 4.25 years of coal mine employment based primarily on the ratio of his working days to 125 days.[16] *Id*. at 18-20. Thus she found claimant established the miner had a total of 16.25 years of coal mine employment, more than needed to invoke the Section 411(c)(4) presumption. *Id.*

Employer's sole argument is the administrative law judge "improperly relied on the 125-day calculation method" set forth at 20 C.F.R. §725.101(a)(32)(iii) to calculate the miner's coal mine employment for the purpose of determining claimant's entitlement to the Section 411(c)(4) presumption. Employer's Brief at 12-13. Employer contends this regulation may only be used to identify the proper responsible operator. *Id.* at 13. Employer asserts the administrative law judge instead should have compared the miner's earnings for each year to the average earnings for 250 or 260 days which employer contends would have resulted in the miner being credited with a maximum of 10.18 years of coal mine employment. Employer's argument lacks merit.

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[15] Although the miner's reported income fell slightly short of the 125-day average in 1975 and 1989, the administrative law judge found there is no credible evidence to refute that he worked 125 days during those years. 20 C.F.R. §725.101(a)(32)(ii); Decision and Order at 19 n.16, 20 n.23.

[16] For 1973, however, the administrative law judge credited the miner with .75 year of coal mine employment based not on the ratio of his working days to 125, but on his SSA earnings records reflecting income during three of the four quarters that year. *See Tackett v. Director, OWCP*, 6 BLR 1-839 (1984); Decision and Order at 18 n. 13.

The regulation specifically provides "if the evidence establishes that the miner worked in or around coal mines at least 125 working days during a calendar year or partial periods totaling one year, then the miner has worked one year in coal mine employment *for all purposes under the Act*." 20 C.F.R. §725.101(a)(32)(i) (emphasis added). Thus, contrary to employer's argument, the definition of one year of coal mine employment is the same for identification of a responsible operator and application of the presumptions under the Act. *See* 65 Fed. Reg. 79,951 (Dec. 20, 2000) (20 C.F.R. §725.101(a)(32) contains a "single definition with general applicability."); Employer's Brief at 13. Further, the administrative law judge properly applied the two-step inquiry set forth in the regulations by determining whether claimant met the threshold requirement of establishing the miner was engaged in coal mine employment for full calendar years, or partial periods totaling one year, prior to determining whether the miner worked for 125 days during those years. We, therefore, reject employer's arguments to the contrary and hold the administrative law judge based her finding on a reasonable method of computation. *See Mitchell*, 479 F.3d at 334-36, 24 BLR at 2-17-18; *Clark*, 22 BLR at 1-280; *see also Shepherd v. Incoal, Inc.*, 915 F.3d 392, 401 (6th Cir. 2019), *reh'g denied*, No. 17-4313 (6th Cir. May 3, 2019) ("[I]f the miner was employed by a coal mining company for 365 (or 366 days if one day is February 29) *and* . . . worked for at least 125 days . . . [he] clearly established one year of coal mine employment" under 20 C.F.R. §725.101(a)(32) (emphasis added); *Muncy*, 25 BLR at 1-27; *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986).

Because it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant established at least fifteen years of coal mine employment. Further, because it is unchallenged on appeal, we affirm her finding all of the miner's coal mine employment took place underground or in substantially similar surface conditions. *Skrack*, 6 BLR at 1-711; Decision and Order at 21.

As employer raises no further challenges, we affirm her findings that claimant invoked the Section 411(c)(4) presumption and employer failed to rebut it. Consequently, we affirm the award of benefits in the miner's claim. 30 U.S.C. §921(c)(4).

The Survivor's Claim

The administrative law judge found claimant satisfied her burden to establish each element 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*) (2012); Decision and Order at 37-38. Moreover, employer raises no specific challenge to these determinations. *See Skrack*, 6 BLR at 1-711. Because we have affirmed the award of benefits in the miner's claim, we

affirm her determination that claimant is derivatively entitled to survivor's benefits in her survivor's claim. 30 U.S.C. §932(*l*) (2012); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge