U.S. Department of Labor

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

BRB Nos. 20-0273 BLA
and 20-0274 BLA

TENIA RATLIFF (o/b/o and Widow of CHARLIE RATLIFF)	)	
Claimant-Respondent	)	
v.	)	
BUBBA COAL COMPANY, INCORPORATED	)	
and	)	DATE ISSUED: 05/18/2021
KENTUCKY EMPLOYERS MUTUAL INSURANCE	)	
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 Granting Request for Modification and Awarding Benefits in Miner's and Survivor's Claims of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

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

Paul E. Jones and Denise Hall Scarberry (Jones & Walters, 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 John P. Sellers, III's Decision and Order Granting Request for Modification and Awarding Benefits in Miner's and Survivor's Claims (2019-BLA-05370, 2019-BLA-05371) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018). This case involves Claimant's request for modification of a Miner's claim filed on January 2, 2013, and a survivor's claim filed on March 12, 2013.

In the initial decision, issued on June 29, 2017, Administrative Law Judge Joseph E. Kane found the evidence did not establish total disability. 20 C.F.R. §718.204(b)(2). Consequently, he found Claimant[1] could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act in the Miner's claim or of death due to pneumoconiosis in her survivor's claim.[2] 30 U.S.C. §921(c)(4) (2018). In addition, entitlement to benefits under 20 C.F.R. Part 718 was precluded in the Miner's claim. Turning to whether Claimant could establish entitlement in the survivor's claim under 20 C.F.R. Part 718, Judge Kane found the evidence did not establish the Miner had pneumoconiosis or that his death was due to pneumoconiosis. He therefore denied benefits.

Claimant timely requested modification in both claims. Director's Exhibit 65. In the Decision and Order that is the subject of this appeal, Administrative Law Judge Sellers (the administrative law judge) credited the Miner with 20.95 years of underground coal mine employment and found the evidence established total disability in the Miner's claim. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the Section 411(c)(4) presumption that the Miner was totally disabled due to pneumoconiosis and established a mistake in a determination of fact. 20 C.F.R. §725.310. He further found Employer did not rebut the presumption and awarded benefits in the Miner's claim. Based on the award

[1] Claimant is the widow of the Miner, who died on February 18, 2013. Director's Exhibit 8. In addition to her survivor's claim, she is pursuing the Miner's claim on his behalf. Director's Exhibit 9.

[2] Under Section 411(c)(4) of the Act, Claimant is entitled to a rebuttable presumption that the Miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis if she establishes 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); 20 C.F.R. §718.305.

of benefits in the Miner's claim, the administrative law judge found Claimant automatically entitled to survivor's benefits under Section 422(*l*) of the Act.[3] 30 U.S.C. §932(*l*) (2018).

On appeal, Employer argues the administrative law judge improperly invoked the Section 411(c)(4) presumption based on erroneous findings that the Miner had at least fifteen years of qualifying coal mine employment and was totally disabled. Employer also argues the administrative law judge erred in finding it did not rebut the Section 411(c)(4) presumption and in awarding benefits in the Miner's claim. It therefore argues the administrative law judge erred in finding Claimant automatically entitled to survivor's benefits. Claimant responds in support of the award of benefits. 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 administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 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).

Modification of a denial of benefits may be granted if a change in conditions has occurred or there was a mistake in a determination of fact in the prior decision. 20 C.F.R. §725.310(a). When considering a modification request, the administrative law judge must consider the evidence for any mistake of fact, including the ultimate fact of entitlement. *Youghiogheny & Ohio Coal Co. v. Milliken*, 200 F.3d 942, 954 (6th Cir. 1999). Because no new evidence was submitted on modification, the administrative law judge considered whether there was a mistake of fact in the prior denial. 20 C.F.R. §725.310(a); Decision and Order at 11.

[3] Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), provides that the survivor of a miner who was eligible to receive benefits at the time of the miner's 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*).

[4] This case arises within the jurisdiction 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 Transcript at 14; Director's Exhibit 3.

The Miner's Claim

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 mines, or in "substantially similar" surface coal mine employment. 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. *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 calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The administrative law judge considered the Miner's applications for benefits, his CM-911a Employment History form, his Federal Insurance Contributions Act (FICA) earnings records, Claimant's answers to interrogatories, and her testimony at the June 8, 2016 and August 28, 2019 hearings. Decision and Order at 4-10. He noted the Miner and Claimant alleged twenty to twenty-three years of coal mine employment between 1979 and 2005 with multiple coal mine operators. *Id*. at 4-6. Citing *Shepherd v. Incoal, Inc*., 915 F.3d 392 (6th Cir. 2019), the administrative law judge explained he would rely on the plain language of the regulation at 20 C.F.R. §725.101(a)(32) and apply its alternate calculation methods, as appropriate, to determine the length of the Miner's coal mine employment. *Id.* at 6-7. Thus, he applied different calculation methods depending upon whether he could determine the beginning and ending dates for a period of employment or that the Miner was employed by a coal mine operator for a full calendar year. If neither, he addressed whether the Miner's earnings established at least 125 working days for a coal mine operator. *Id*. at 7-10.

Based upon the evidence as a whole, the administrative law judge credited the Miner with 20.95 years of underground coal mine employment. Decision and Order at 10. Employer contends he erred in crediting the Miner with more than fifteen years of coal mine employment and failed to adequately explain his method of calculation. Employer's Brief at 5-7. We disagree.

Initially, the administrative law judge accurately noted the Miner provided the exact beginning and ending dates for his employment with Mountain Edge Mining, Incorporated from June 23, 2003 to June 29, 2003, with Denise Mining from September 11, 2003 to March 19, 2004, Cohiba Mining from September 16, 2004 to October 8, 2004, and with

Bubba Coal Mining from October 10, 2004 to November 11, 2004.[5] Decision and Order at 7; Employer's Brief at 6; Director's Exhibit 3. Based upon these dates, the administrative law judge found the Miner worked in or around coal mines for 81 days in 2003, 126 days in 2004, and 218 days in 2005. Decision and Order at 7. Because the Miner worked in or around a coal mine for over 125 days in 2004 and 2005, the administrative law judge permissibly credited him with two years of coal mine employment in those years. 20 C.F.R. §725.101(a)(32)(i); *see Shepherd*, 915 F.3d at 401; Decision and Order at 7. Because the Miner worked less than 125 days in 2003, the administrative law judge applied the optional formula at 20 C.F.R. §725.101(a)(32)(iii)[6] and permissibly credited him with 0.30 of a year of coal mine employment for that year. *Shepherd*, 915 F.3d at 402; Decision and Order at 8, 10.

The administrative law judge found the exact dates for the Miner's remaining coal mine employment could not be determined. Decision and Order at 7. For those years in which the Miner reported on his coal mine employment history form that he worked for a single employer for one calendar year, the administrative law judge found that, absent evidence to the contrary, he had to presume the Miner worked in or around the mines for at least 125 days. Decision and Order at 6, *citing Shepherd*, 915 F.3d at 402. Finding no such contrary evidence, the administrative law judge permissibly credited Claimant with full years of employment for the years 1980, 1981, 1983, 1984, 1985, 1991, 1994, 1995, 1996, and 2000. *Shepherd*, 915 F.3d at 402; Decision and Order at 8; Director's Exhibit 3.

For the years 1997 and 1999, the Miner indicated he worked for multiple employers, but his yearly earnings exceeded the average yearly earnings of coal miners in that year.

[5] Based upon the Miner's statements on his employment history Form and Claimant's statements, the administrative law judge found Denise Mining, Cohiba Mining, and Bubba Coal Mining were the same operator at the same mine, and thus considered the Miner's work with the three companies as a single period of employment. Decision and Order at 7; Director's Exhibits 3, 35 at 4-5, 59 at 18-19.

[6] The regulation provides that if the beginning and ending dates of a miner's employment cannot be ascertained, or the miner's employment lasted less than a calendar year, the administrative law judge may determine the length of the miner's work history by dividing his yearly income by the average daily earnings of employees in the coal mining industry, as reported by the Bureau of Labor Statistics (BLS). 20 C.F.R. §725.101(a)(32)(iii). The BLS wage information is published in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (BLBA) Procedure Manual*, entitled "Average Wage Base."

Decision and Order at 8-9; Director's Exhibits 3, 5. The administrative law judge therefore found the evidence established the Miner worked in or around coal mines for at least 125 working days during those years, and therefore permissibly found two additional years of coal mine employment. 20 C.F.R. §725.101(a)(32); *Shepherd*, 915 F.3d at 402; Decision and Order at 9.

For the Miner's remaining coal mine employment in 1979, 1982, 1986, 1989 to 1993, 1998, 2001, and 2002, the administrative law judge accurately found the Miner did not work a full calendar year and worked less than 125 days. Decision and Order at 9. Therefore, he applied the method of calculation at 20 C.F.R. §725.101(a)(32)(iii) for these years, and found the Miner established an additional 6.95 years of coal mine employment, for a total of 20.95 years of coal mine employment.[7] Decision and Order at 9-10.

As it is based on a reasonable method of calculation and supported by substantial evidence, we affirm the administrative law judge's finding that the Miner established more than fifteen years of coal mine employment.[8] *Shepherd*, 915 F.3d at 400-06; *Muncy*, 25

[7] We reject Employer's argument that the administrative law judge may not credit the Miner with coal mine employment for companies appearing on his FICA earnings report that he did not also list on his Employment History Form when those names indicate they are coal companies. Employer's Brief at 5-6. Employer offers no authority for this proposition and does not indicate which years of employment it objects to. Moreover, a review of the record indicates that excluding the employment with coal companies reflected on the Miner's FICA earnings report but not also listed on the Miner's Employment History forms would still leave the Miner with 19.22 years of coal mine employment. Therefore any error in the administrative law judge's decision to consider this additional employment is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[8] To the extent Employer argues the administrative law judge should have exclusively relied upon the Miner's FICA earnings and the formula at 20 C.F.R. §725.101(a)(32)(iii) in determining the length of his coal mine employment, we disagree. Employer's Brief at 6-7. The use of the formula is discretionary. 20 C.F.R. §725.101(a)(32)(iii). Moreover, it is the administrative law judge's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See 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). Employer has not demonstrated why it was unreasonable for the administrative law judge to rely upon the Miner's employment history form, which contained a detailed description of twenty-one periods of employment, including for each period the company name, location of the mine, type of mine, his job, and the month and year he worked for each employer. Director's Exhibit 3. Employer states only that it

BLR at 1-27. Moreover, we affirm the administrative law judge's determination that all of the Miner's employment took place in underground mines based upon the uncontradicted statements of the Miner and Claimant. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc); Decision and Order at 25; Hearing Transcript at 18; Director's Exhibits 3, 35, 59.

Total Disability

A miner is 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). In the absence of contrary probative evidence, a miner's total disability is established by qualifying pulmonary function studies, qualifying 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 administrative law judge must weigh the relevant evidence supporting a finding of total disability against the 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). Employer contends the administrative law judge erred in finding the Miner's treatment records established total disability. Employer's Brief at 7-11.

Before considering whether the Miner was totally disabled, the administrative law judge found the Miner's usual coal mine employment working as a heavy equipment operator of a drill, scoop, and roof bolter required him to perform medium exertion manual labor. Decision and Order at 12. Employer contends the administrative law judge erroneously assumed the Miner's description of his coal mine employment was incorrect and erred in relying on his own knowledge of the inherent nature of such jobs. Employer's Brief at 7-8.

Employer mischaracterizes the administrative law judge's decision. The administrative law judge found the only evidence of the Miner's job duties was in his CM-913a, Description of Coal Mine Work. After reviewing this document, he noted the Miner described significantly less sitting and standing than the administrative law judge would

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believes the Miner's recollection could have been incorrect because he "was clearly acutely ill" when he completed the form. Employer's Brief at 6; Director's Exhibit 3. Employer requests a reweighing of the evidence, which we are not authorized to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

have expected for those types of jobs.[9] Decision and Order at 12. Because there was no other evidence, the administrative law judge credited the Miner's statements, and found his usual coal mine employment required medium exertion. *Id.* Thus, contrary to Employer's arguments, the administrative law judge permissibly relied upon the Miner's description of his coal mine employment, not his own knowledge. *Cross Mountain Coal, Inc. v. Ward*, 93 F.3d. 211, 218-19 (6th Cir. 1996); Decision and Order at 12.

The administrative law judge found the pulmonary function study evidence and arterial blood gas study evidence does not establish total disability, and there is no evidence that the Miner had cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 13, 15-16. He further found the medical opinions of Drs. Sikder, Bronstein, Caffrey, and Jarboe do not address whether the Miner was totally disabled and do not contain sufficient information for him to reasonably infer the Miner was totally disabled from performing his usual coal mine employment.[10] *Id.* at 16-19.

He concluded Claimant established total disability based on the Miner's treatment records, however, which indicated he needed to use bronchodilators and inhalers, and had severe chronic obstructive pulmonary disease (COPD), end-stage lung disease, chronic dyspnea, shortness of breath, wheezing, dyspnea with exertion, hypoxemia, exercise intolerance, a pneumothorax, and acute respiratory failure. Decision and Order at 23-24.

Employer contends the administrative law judge erred in relying on the Miner's treatment records because they do not contain an explicit discussion of the Miner's limitations. Employer's Brief at 9. Employer further argues the administrative law judge

[9] The Miner reported he worked as a roof bolter, driller, and scoop operator, which required him to sit for half an hour a day, crawl 500 feet for half an hour a day, lift sixty pounds three times a day, lift twenty pounds once a day, and clean belt lines. Director's Exhibit 4. The administrative law judge noted the Miner's statement that he was not required to stand for any length of time and only required to sit for half an hour a day was inconsistent with his experience of such jobs requiring frequent to constant sitting and standing. Decision and Order at 12.

[10] Dr. Sikder opined the Miner had severe chronic obstructive pulmonary disease (COPD). Director's Exhibits 11, 27a. Similarly, Dr. Bronstein opined the Miner had severe lung disease. Director's Exhibits 15, 27b, 31. Dr. Caffrey opined the Miner had end-stage COPD and died a pulmonary death. Director's Exhibits 14, 30. Dr. Jarboe opined the Miner did not have end-stage lung disease, but had a severe pulmonary impairment at the time of his death. Director's Exhibit 52.

improperly relied on information from the Miner's treatment records that cannot establish the existence of a totally disabling pulmonary or respiratory impairment and improperly acted as a medical expert. *Id*. at 9-10. We disagree.

A physician need not phrase his or her opinion in terms of "total disability" in order to support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990), *citing Black Diamond Coal Co. v. Benefits Review Board* [*Raines*], 758 F.2d 1532, 1534 (11th Cir. 1985). Treatment records may support a finding of total disability if they provide sufficient information from which the administrative law judge can reasonably infer a miner was unable to do his last coal mine job. *See Freeman*, 897 F.2d at 894.

The administrative law judge considered the Miner's treatment records from Dr. Sikder from March 28, 2011 to December 31, 2012,[11] Dr. Helton from November 2, 2012 to December 6, 2012,[12] and King's Daughters Medical Center from January 12, 2013 to February 6, 2013.[13] Decision and Order at 20-23; Director's Exhibits 13-15, 17, 28, 31,

[11] Dr. Sikder documented symptoms of chronic dyspnea, exercise intolerance, episodic/minimal wheezing, dyspnea with exertion, chest congestion, and sore throat. Director's Exhibit 14. She diagnosed severe COPD based on pulmonary function studies, and opined that x-rays and computed tomography scans showed evidence of pneumonia and interstitial and bullous changes. *Id*. Dr. Sikder documented a history of throat cancer, COPD, lung infiltrates, aspiration, and other conditions, as well as treatment with bronchodilators. *Id*. She prescribed inhalers, diagnosing the Miner with severe COPD, lung infiltrate, silicosis, lung nodules, and pneumonia. *Id*.

[12] Dr. Helton reported symptoms of dysphagia and intermittent wheezing, and a history of throat cancer, chemotherapy and radiation, emphysema, aspiration pneumonia, and shortness of breath. Director's Exhibits 17, 33. He diagnosed the Miner with cancer, dysphagia, shortness of breath, cough, aspiration pneumonia, and tobacco use disorder. *Id*.

[13] The Miner was hospitalized at King's Daughters Medical Center for left pneumothorax, during which time he underwent surgical resection of portions of his left lung. Director's Exhibits 13, 15, 28, 31. On January 12, 2013, Dr. Bronstein diagnosed pneumothorax, COPD, and throat cancer. Director's Exhibit 15, 30. On January 22, 2013, Dr. Gaing diagnosed throat cancer, COPD, acute respiratory failure, pneumonia, pneumothorax, and other conditions. Director's Exhibits 11, 13, 27a, 28. On January 31, 2013, Dr. Thorarinsson noted the Miner was chronically ill and originally came to the hospital with cough and increased shortness of breath, noting the Miner was severely debilitated and deconditioned due to the pneumothorax. Director's Exhibits 11, 27a. He diagnosed acute respiratory failure, coal miners' lung/fibrosis, COPD, resolved

33. The records establish the Miner suffered from severe COPD and end-stage lung disease, that he experienced chronic dyspnea, shortness of breath, wheezing, and dyspnea, that he had hypoxemia and was exercise intolerant, that he suffered from pneumothorax and acute respiratory failure, and that his treatment required the use of bronchodilators and inhalers. Decision and Order at 23-24. Finding the Miner's treating physicians sufficiently documented his condition, the administrative law judge determined the Miner would be unable to perform his usual coal mine employment. *Id*. at 24. He found the Miner's severe COPD and end-stage lung disease, hypoxemia, exercise intolerance, and use of medications would have prevented him from returning to his job, which required crawling and performing medium exertion. *Id*.

Contrary to Employer's contention, we see no error in the administrative law judge's finding that the Miner's treatment records support a finding of total disability. Decision and Order at 24. He relied upon statements from physicians that the Miner had severe and chronic end-stage pulmonary disease with signs, symptoms and the use of medications that would prevent the Miner from performing the exertional requirements of his usual coal mine job.[14] *Id.* The administrative law judge has discretion to weigh the medical evidence

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pneumothorax, pneumonia, pneumoconiosis, emphysema, and a severely debilitated state. *Id.* During a February 8, 2013 admission, Dr. Bronstein noted the Miner was readmitted due to total body pain, a long hospitalization secondary to emaciation, and end-stage lung disease. Director's Exhibits 12, 15, 27b, 31. He opined the Miner's chest x-ray appeared stable, and diagnosed dysphagia, COPD, pneumonia, coal miners' lung disease, and throat cancer, and recommended hospice care due to an air leak in an indwelling chest tube. *Id*. Dr. Barker, who signed the Miner's death certificate, noted the Miner's death was due to end-stage COPD. Director's Exhibits 8, 27.

[14] Employer contends the administrative law judge erred in relying upon periods of acute illness and the Miner's need for a walker after one such illness, in finding total disability. Employer's Brief at 9. While the administrative law judge noted the Miner's acute pulmonary conditions, as discussed above, he permissibly found the Miner's severe *chronic* obstructive pulmonary disease and end-stage lung disease was totally disabling based upon "statements and notations set forth in the treatment records regarding limits on the Miner's activities due to his respiratory or pulmonary condition." *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 482-83 (6th Cir. 2012); *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); Decision and Order at 24. Thus, Employer has failed to explain how the administrative law judge's reliance on the Miner's temporary need for a walker, after a period of acute illness, would alter his finding that the Miner's chronic respiratory disease, hypoxemia, and need for bronchodilators establish total disability. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009).

and draw his own inferences therefrom. *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 482-83 (6th Cir. 2012); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002). The Board is not empowered to reweigh the evidence or substitute its judgment. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the administrative law judge drew reasonable inferences from the Miner's treatment records, we affirm his finding the Miner was totally disabled at the time of his death. 20 C.F.R. §718.204(b)(2)(iv); *see Banks*, 690 F.3d at 482-83; *Freeman*, 897 F.2d at 894. As Employer raises no further challenges, we affirm the administrative law judge's finding that the evidence as a whole establishes total disability, and therefore Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §§718.204(b)(2); 718.305.

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

Because the Miner invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[15] or "no part of the [M]iner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The administrative law judge found Employer failed to establish rebuttal by either method.

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) (Boggs, J., concurring and dissenting). The United States Court of Appeals for the Sixth Circuit holds this standard requires Employer show the miner's "coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal*

[15] "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). "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

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 administrative law judge considered the opinions of Drs. Jarboe and Caffrey that the Miner did not have legal pneumoconiosis.[16] Director's Exhibits 14, 32, 52. The administrative law judge found Dr. Jarboe's opinion not well documented or reasoned and based upon premises contrary to the Act, and accorded it little weight. Decision and Order at 30-31. He further found Dr. Caffrey's opinion entitled to little weight because, while he opined the Miner's COPD was due to smoking, he offered no rationale for why the Miner's 20.95 years of coal mine employment did not contribute to his COPD. *Id*. at 31.

Employer contends the administrative law judge erred in finding it did not rebut the existence of legal pneumoconiosis, because "[c]learly this man's impairment was the result of throat cancer" and no physician has opined the Miner's impairment is due to coal mine dust exposure. Employer's Brief at 11. Contrary to Employer's argument, Claimant did not have to present evidence establishing the existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Employer was required to rebut the presence of the disease. *Id*. As Employer has not challenged the administrative law judge's credibility findings with respect to Drs. Jarboe and Caffrey, we affirm them. *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, 1-109 (1983). We further affirm, as unchallenged on appeal, the administrative law judge's determination that the Miner's treatment records do not rebut the existence of legal pneumoconiosis. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 32. We therefore affirm the administrative law judge's determination that Employer did not rebut the existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 33.

Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis.[17] Therefore, we affirm the administrative law

[16] The administrative law judge also considered the opinions of Drs. Bronstein and Sikder. The administrative law judge correctly noted that, as Dr. Bronstein diagnosed legal pneumoconiosis and Dr. Sikder did not discuss the issue, their opinions do not assist Employer in carrying its burden to rebut the existence of legal pneumoconiosis. Decision and Order at 32; Director's Exhibits 5, 27, 31.

[17] The administrative law judge also found Employer did not disprove clinical pneumoconiosis. Decision and Order at 30. Because we have affirmed the administrative

judge's finding that Employer did not establish rebuttal pursuant to 20 C.F.R. §718.305(d)(1)(i). *Young*, 947 F.3d at 409.

Disability Causation

The administrative law judge next considered whether Employer established "no part of the [M]iner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge rationally discounted the disability causation opinions of Drs. Jarboe and Caffrey because neither physician diagnosed the Miner with legal pneumoconiosis, contrary to the administrative law judge's finding that Employer failed to disprove the existence of the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 33-34. We therefore affirm the administrative law judge's finding that Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii) and the award of benefits in the Miner's claim.[18]

The Survivor's Claim

Because we have affirmed the award of benefits in the Miner's claim and Employer raises no specific challenge to the survivor's claim, we affirm the administrative law judge's determination that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

law judge's findings on legal pneumoconiosis, we need not address Employer's arguments on clinical pneumoconiosis. *See Larioni*, 6 BLR at 1-1278.

[18] We affirm, as unchallenged on appeal, the administrative law judge's determination that granting Claimant's modification request renders justice under the Act. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 35.

Accordingly, we affirm the administrative law judge's Decision and Order Granting Request for Modification and Awarding Benefits in the Miner's and the Survivor's Claims.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge