U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB Nos. 15-0302 BLA
and 15-0308 BLA

VIOLET M. SPURLOCK (Widow of and o/b/o ROY SPURLOCK) Claimant-Respondent v. ISLAND CREEK KENTUCKY MINING and Self-Insured Through ISLAND CREEK COAL COMPANY, c/o WELLS FARGO DISABILITY MANAGEMENT Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 04/18/2016 DECISION and ORDER

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

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

Before: BUZZARD, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits in the Miner's Claim and Decision and Order Granting Benefits in the Survivor's Claim (2010-BLA-05347 and 2012-BLA-05626) of Administrative Law Judge Larry S. Merck, rendered pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The miner's claim is a subsequent claim,[1] wherein the administrative law judge found that the miner worked for eighteen years in surface coal mine employment in conditions substantially similar to those in an underground coal mine, and also suffered from a totally disabling respiratory or pulmonary impairment. Based on those determinations, and the filing date of the claim, the administrative law judge found that claimant[2] invoked the rebuttable presumption that the miner was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[3]

[1] The miner filed an initial claim for benefits on August 27, 1984, which was denied by Administrative Law Judge Wallace H. Nations on February 3, 1988, because the miner did not establish total disability. Director's Exhibit 1. Upon review of the miner's appeal, the Board affirmed Judge Nation's denial of benefits. *Spurlock v. Island Creek Coal Co*., BRB No. 88-0671 BLA (May 29, 1990) (unpub.). The miner twice requested modification of the denial on August 26, 1991, and May 2, 1995, and both requests were denied on May 24, 1994 and March 24, 1997, respectively. Director's Exhibit 1. The miner filed a second claim for benefits on June 24, 2002, which was denied by Administrative Law Judge Larry W. Price on January 24, 2007. Director's Exhibit 2. Although Judge Price found that the miner established total disability, and a change in an applicable condition of entitlement under 20 C.F.R. §725.309, he determined that the evidence was insufficient to establish the existence of pneumoconiosis. *Id*. The Board affirmed this denial of benefits. *R.S.* [*Spurlock*] *v. Island Creek Coal Co*., BRB Nos. 07-0421 BLA and 07-0421 BLA-A (Jan. 30, 2008) (unpub.). The miner took no further action until he filed this subsequent claim on February 18, 2009. Director's Exhibit 4. It was pending when he died on December 12, 2011. Director's Exhibit 73.

[2] Claimant, the widow of the miner, filed her claim for survivor's benefits on January 23, 2012, and is also pursuing the miner's claim on her husband's behalf. Director's Exhibits 70, 75. The miner's subsequent claim and the survivor's claim were consolidated for decision by the district director. Director's Exhibits 84, 85.

[3] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that the miner was totally disabled due to pneumoconiosis where the record establishes at least

Because claimant invoked the Section 411(c)(4) presumption, the administrative law judge also found that claimant demonstrated a change in an applicable condition of entitlement under 20 C.F.R. §725.309. Furthermore, the administrative law judge determined that employer did not establish rebuttal of the Section 411(c)(4) presumption. Accordingly, benefits were awarded in the subsequent miner's claim. In addition, the administrative law judge found that claimant was automatically entitled to survivor's benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012).[4]

On appeal, employer argues that the administrative law judge erred in finding that claimant established a totally disabling respiratory or pulmonary impairment for invocation of the Section 411(c)(4) presumption in the miner's claim. Employer further asserts that the administrative law judge erred in finding that employer did not rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief, unless specifically requested to do so by the Board.[5]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, 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).

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fifteen years of underground coal mine employment, or 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), as implemented by 20 C.F.R. §718.305.

[4] Section 422(*l*) provides that the survivor of a miner who was eligible to receive benefits at the time of his or her 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 by the parties on appeal, the administrative law judge's finding that the miner worked for eighteen years in qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[6] The record reflects that the miner's last coal mine employment was in Kentucky. Decision and Order at 4; Director's Exhibit 1 at 785-87, 96. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

MINER'S CLAIM: INVOCATION OF THE SECTION 411(c)(4) PRESUMPTION

The administrative law judge found that claimant failed to establish that the miner was totally disabled under 20 C.F.R. §718.204(b)(2)(i), as none of the newly submitted pulmonary function studies was qualifying[7] for total disability. Decision and Order at 9-10; Director's Exhibits 13, 15, 16; Employer's Exhibit 3. The administrative law judge also found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), as three of the four newly submitted arterial blood gas studies were non-qualifying. Decision and Order at 8; Director's Exhibits 13, 15, 16; Employer's Exhibit 3. The administrative law judge further found that because there was no evidence of cor pulmonale with right-sided congestive heart failure, claimant was unable to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 12 n.8.

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge weighed the medical opinions of Drs. Rasmussen, Baker, Jarboe, and Rosenberg. Decision and Order at 12-20. The administrative law judge credited Dr. Rasmussen's opinion, that the miner was totally disabled, over the contrary opinions of Drs. Jarboe and Rosenberg.[8] *Id*. Weighing all of the evidence together, the administrative law judge determined that claimant satisfied her burden to establish that the miner had a totally disabling respiratory or pulmonary impairment.[9] *Id*. at 20.

Employer argues that the administrative law judge erred in crediting Dr. Rasmussen's opinion because he found that the miner was totally disabled, based on the pulmonary function and arterial blood gas studies, contrary to the administrative law judge's finding that the pulmonary function and arterial blood gas study evidence is non-qualifying for total disability. Employer's assertion of error is without merit.

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[7] A "qualifying" pulmonary function or arterial blood gas study yields results that are equal to or less than the values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study produces results that exceed those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[8] The administrative law judge assigned little weight to Dr. Baker's opinion, that the miner was totally disabled, finding it to be "confusing and equivocal." Decision and Order at 15.

[9] The administrative law judge found that the evidence from the prior claims was "less probative of [the miner's] condition" because of the age of that evidence. Decision and Order at 20.

The fact that claimant was unable to establish total disability, based on pulmonary function or arterial blood gas study evidence, does not preclude a finding of total disability based on the medical opinion evidence. The regulation at 20 C.F.R. §718.204(b)(2)(iv) specifically states:

> Where total disability cannot be shown under paragraphs (b)(2)(i), (ii), or (iii) of this section, or where pulmonary function tests and/or blood gas studies are medically contraindicated, total disability may nevertheless be found if a physician exercising reasoned medical judgment, based on medically accepted clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents or prevented the miner from engaging in [his or her usual coal mine] employment as described in paragraph (b)(1) of this section.

20 C.F.R. §718.204(b)(2)(iv). Furthermore, the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has specifically held that even a mild respiratory impairment may prevent a miner from performing his usual coal mine work, when considered in conjunction with the specific physical requirements of the miner's coal mine job. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000).

In this case, Dr. Rasmussen specifically discussed the exertional requirements of the miner's usual coal mine work in conjunction with the objective testing. Director's Exhibit 13. Dr. Rasmussen noted that the miner's "last job was car dropper," that he was "required to climb the hopper cars, turn heavy brake wheels, clean out the cars which sometimes required considerable work, especially in winter with frozen material in the hopper," and "did considerable heavy and some very heavy manual labor." *Id*. Dr. Rasmussen opined that the miner was unable to perform his usual coal mine employment because the pulmonary function and arterial blood gas testing "indicate a very marked loss of lung function as reflected by his ventilatory impairment, his marked reduction in diffusing capacity, and his marked hypoxia during very light exercise." *Id*. We conclude that the administrative law judge acted within his discretion in finding that Dr. Rasmussen provided a reasoned and documented opinion that the miner was totally disabled from performing his usual coal mine work because his opinion was "based on [the miner's] clinical examination . . . medical and social history, [pulmonary function studies], and [arterial blood gas studies]." Decision and Order at 13; *see Cornett*, 227 F.3d at 576, 22 BLR at 2-121; *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). Thus, we affirm the administrative law judge's decision to credit Dr. Rasmussen's opinion pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Employer also contends that the administrative law judge erred in finding the opinions of Drs. Jarboe and Rosenberg to be insufficiently reasoned on the issue of total disability and in failing to resolve the conflicting evidence. We disagree.

The record reflects that Dr. Jarboe examined the miner and prepared a medical report dated October 17, 2009, wherein he reviewed the miner's employment history. Director's Exhibit 16. As to the issue of whether the miner was totally disabled from performing his usual coal mine work, Dr. Jarboe wrote:

> [Miner] is totally and permanently disabled from a pulmonary standpoint. He is not disabled from a ventilatory standpoint in that his spirogram shows an FVC and FEV1 that exceed the federal limits for disability. Also his lung volumes show only mild impairment. However, he does appear to have a significant impairment of gas exchange. It is my reasoned opinion that this impairment is caused by intrinsic cardiac disease, changes in his thoracic aorta and the extensive scarring in the right lung base.

Id. at 8. However, as noted by the administrative law judge, when asked during his deposition whether the miner had a disabling lung disease, Dr. Jarboe stated, "[i]n my opinion, he - - does not." Decision and Order at 17, *quoting* Employer's Exhibit 7 at 47-48. At a later point in the deposition, Dr. Jarboe was asked if he believed the miner was totally disabled based on the blood gas studies and replied, "Yes, I do." Employer's Exhibit 7 at 52. Dr. Jarboe further explained:

> [The miner] was [disabled] based on his impairment of gas transfer. I guess it's splitting hairs to say whether it was pulmonary since, in my opinion, that impairment of gas transfer related to heart disease, but it was [what] the heart was doing to his lungs.

Id. at 53.

Dr. Rosenberg examined the miner and prepared a report dated March 31, 2010, wherein he described that the miner's usual coal mine work required him to lift up to 100 pounds and to "constantly" go up and down the stairs of the tipple. Employer's Exhibit 3 at 12. Dr. Rosenberg diagnosed a "moderate to severe [obstructive respiratory impairment], without bronchodilator response" and "significantly reduced diffusing capacity with marked airtrapping and a likely degree of restriction." *Id.* He stated that, "from a pulmonary point of view, [the miner] probably [was totally disabled] from performing his previous coal mining job or other similarly arduous types of labor." *Id*. at 13. During his deposition, Dr. Rosenberg was asked if the miner had evidence of a pulmonary disability, and he stated, "I felt that [the miner] was disabled." Employer's Exhibit 8 at 19. Dr. Rosenberg further explained:

> I thought [the miner] was disabled from a pulmonary perspective, but not directly from a primary pulmonary problem, but secondary to these other factors which I talked about, the heart issues, and the restriction from the heart surgeries, the fluid accumulation in the lungs, et cetera.

Id. at 20; *see* Employer's Exhibit 3.

Contrary to employer's arguments, we see no error in the administrative law judge's finding that Drs. Jarboe and Rosenberg each gave "confusing and equivocal" statements regarding whether the miner was totally disabled. Decision and Order at 18-19; *see Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002). Moreover, we reject employer's contention that the administrative law judge erred in failing to resolve the cause of the miner's impairment when weighing the evidence at 20 C.F.R. §718.204(b)(2)(iv). Employer states that, because the pulmonary function and arterial blood gas studies submitted with the new claim did not support a finding of total disability, "[t]his was a change in condition inconsistent with a progressive disease as the prior claims suggested disability from these same tests." Employer's Brief in Support of Petition for Review at 14. Employer argues that "[t]his reality is important in analyzing the scientific controversy presented – the causation of the impairment." *Id*. Employer notes that while Drs. Jarboe and Rosenberg identified an impairment, they specifically "opined that the impairment was not pulmonary and [not] related to a primary lung disorder, but instead arose from cardiac dysfunction." *Id*. at 14-15. Thus, employer asserts that their opinions establish that the miner was not totally disabled. We disagree.

The relevant inquiry at 20 C.F.R. §718.204(b)(2)(iv) is whether the miner's respiratory or pulmonary impairment precluded the performance of his usual coal mine work. The etiology of the miner's pulmonary impairment concerns the issue of total disability causation, which is addressed at 20 C.F.R. §718.204(c), or in consideration of whether employer is able to successfully rebut the Section 411(c)(4) presumption. *See* 20 C.F.R. §718.305(b), (c); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011). Because the administrative law judge acted within his discretion in weighing the medical opinion evidence, we affirm his finding that claimant established a totally disabling respiratory or pulmonary impairment, based on Dr. Rasmussen's opinion pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-325 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 12-20.

We also affirm the administrative law judge's overall finding that claimant established total disability, taking into consideration all of the contrary probative

evidence under 20 C.F.R. §718.204(b)(2). *See* 20 C.F.R. §718.204(b)(2); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc); Decision and Order at 20. As claimant met her burden of establishing the miner's total disability, we affirm the administrative law judge's finding that claimant is entitled to the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). *Id*.; *see* 20 C.F.R. §718.305(b). Furthermore, because the administrative law judge found that claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, claimant satisfied her burden to demonstrate a change in an applicable condition of entitlement under 20 C.F.R. §725.309(d).[10] *See E. Assoc. Coal Corp. v. Director, OWCP* [*Toler*], 805 F.3d 502, 511-14, BLR (4th Cir. 2015) (holding that utilizing the Section 411(c)(4) presumption to show a change in an applicable condition of entitlement under 20 C.F.R. §725.309 does not contravene the Act or the implementing regulations); *Consolidation Coal Co. v. Director, OWCP* [*Bailey*], 721 F.3d 789, 794, 795, 25 BLR 2-285, 2-292 (7th Cir. 2013).

[10] Insofar as employer is arguing that claimant cannot satisfy the requirements of 20 C.F.R. §725.309, based on a comparison of the prior claim evidence with the newly submitted evidence in order to determine whether there has been a physical change in the miner's condition since the denial of his prior claim, employer's argument has no merit. 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 date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *see 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(d)(2). As the miner's prior claim was denied for failure to establish the existence of pneumoconiosis, claimant had to establish this element of entitlement, based on the newly submitted evidence, in order to obtain a review of the current subsequent claim on the merits. *White*, 23 BLR at 1-3; *see Buck Creek Coal Co. v. Sexton*, 706 F.3d 756, 25 BLR 2-221 (6th Cir. 2013).

MINER'S CLAIM: REBUTTAL OF THE SECTION 411(c)(4) PRESUMPTION

In order to rebut the Section 411(c)(4) presumption, employer must affirmatively establish that the miner did not have either legal[11] or clinical[12] pneumoconiosis, or that "no part of the miner's disabling respiratory or pulmonary impairment was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii); *see Morrison*, 644 F.3d at 480, 25 BLR at 2-9; *W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 154-56 (2015) (Boggs, J., concurring and dissenting). In considering whether employer disproved the existence of legal pneumoconiosis, the administrative law judge rejected the opinions of Drs. Jarboe and Rosenberg,[13] that the miner had no respiratory or pulmonary disease related to coal dust exposure. Decision and Order at 22-26. Although employer asserts that the administrative law judge failed to consider the entirety of the

[11] Legal pneumoconiosis is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The regulation also provides that "a disease 'arising out of coal mine employment' 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).

[12] "'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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment." 20 C.F.R. §718.201(a)(1).

[13] Employer contends that Dr. Dahhan's opinion also supports rebuttal of the Section 411(c)(4) presumption. Employer's Brief in Support of Petition for Review at 18. However, the administrative law judge properly declined to weigh Dr. Dahhan's opinion because the administrative law judge determined that employer already submitted its full complement of medical opinion evidence in the subsequent miner's claim, pursuant to 20 C.F.R. §725.414, through the opinions of Drs. Jarboe and Rosenberg. *See* Decision and Order at 10-11 n.7. Moreover, the administrative law judge specifically concluded that employer did not establish good cause for exceeding those evidentiary limitations. *Id.*

opinions of Drs. Jarboe and Rosenberg in finding that employer did not disprove the existence of legal pneumoconiosis, the administrative law judge fully discussed the explanations given by both physicians for why the miner's restrictive lung disease was due to obesity and residual scarring from cardiac surgery, along with their explanations attributing the impairment evidenced by the miner's arterial blood gas studies to his cardiac issues. *Id.*; *see* Director's Exhibit 16; Employer's Exhibits 3, 7, 8. Contrary to employer's contention, we see no error in the administrative law judge's findings that neither Dr. Jarboe, nor Dr. Rosenberg, "adequately explain[s] whether [the miner's] pulmonary impairment was 'significantly related to, or substantially aggravated by' coal dust exposure."[14] Decision and Order at 23, 25; *quoting* 20 C.F.R. §718.201(b); *see Napier*, 301 F.3d at 713-714, 22 BLR at 2-553. Thus, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by disproving the existence of legal pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i).[15] *See Morrison*, 644 F.3d at 480, 25 BLR at 2-9.

Furthermore, the administrative law judge permissibly concluded that the opinions of Drs. Jarboe and Rosenberg were not credible as to the cause of the miner's respiratory disability, since neither physician diagnosed legal pneumoconiosis. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013); *Island Creek Kentucky Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-474 (6th Cir. 2013); *Scott v. Mason Coal Co.*, 289 F.3d 263, 268-269, 22 BLR 2-372, 2-383-84 (4th Cir. 2002); Decision and Order at 26-27. We therefore affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption by establishing that no part of the miner's disability was caused by legal pneumoconiosis, as defined in 20 C.F.R. §718.201. *See* 20 C.F.R. §718.305(d)(1)(ii); *Ogle*, 737 F.3d at 1071, 25 BLR at 2-446-47. Thus, we affirm the administrative law judge's award of benefits in the subsequent miner's claim.

[14] Employer argues that the administrative law judge erred in finding that Drs. Jarboe and Rosenberg required the presence of an obstructive impairment in order to attribute the miner's restrictive impairment to coal dust exposure. Employer's Brief in Support of Petition for Review at 20-23. Because the administrative law judge provided a valid basis for rejecting the opinions of Drs. Jarboe and Rosenberg, it is not necessary that we address this argument. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

[15] Contrary to employer's contention, the administrative law judge properly found that it was not necessary to address whether employer disproved the existence of clinical pneumoconiosis, as employer's failure to disprove the existence of legal pneumoconiosis precludes rebuttal under 20 C.F.R. §718.305(d)(1)(i). *See West Virginia CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); Decision and Order at 26 n.9.

SURVIVOR'S CLAIM

Having awarded benefits in the miner's claim, the administrative law judge found that claimant satisfied her burden to establish each fact necessary to demonstrate entitlement under Section 422(*l*) of the Act: that she filed her claim after January 1, 2005; that she is an eligible survivor of the miner; that her claim was pending on or after March 23, 2010; and that the miner was determined to be eligible to receive benefits at the time of his death. 30 U.S.C. §932(*l*); Decision and Order at 28. Based on these findings, which are supported by substantial evidence, we affirm the administrative law judge's conclusion that claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*). 30 U.S.C. §932(*l*); *Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, the administrative law judge's Decision and Order Granting Benefits in the Miner's Claim and Decision and Order Granting Benefits in the Survivor's Claim is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge