BRB Nos. 10-0667 BLA
and 10-0668 BLA

SHEBA W. PRATER (Widow and o/b/o of Estate of CHARLES W. PRATER)	)	
Claimant-Respondent	)	
v.	)	
BEVINS BRANCH RESOURCES, INCORPORATED	)	DATE ISSUED: 08/26/2011
and	)	
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 Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Paul E. Jones and James W. Herald III (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer.

Jonathan Rolfe (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits (2008-BLA-05143 and 2008-BLA-05144) of Administrative Law Judge Pamela Lakes Wood, rendered on a miner's claim and a survivor's claim[1] filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act).[2] A hearing was held on these consolidated claims on March 25, 2009.

On March 23, 2010, amendments to the Act were enacted, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010. The amendments revive Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4). The amendments also revive Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides that a 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*).

[1] Claimant, Sheba W. Prater, is the widow of the deceased miner and is pursuing the miner's claim on behalf of his estate. Director's Exhibits 26, 46. The miner filed his claim for benefits on May 18, 2005. Director's Exhibit 4. The district director awarded benefits in a Proposed Decision and Order dated February 6, 2006. Director's Exhibit 37. Employer requested a hearing and the case was transferred to the Office of Administrative Law Judges. Prior to the scheduled hearing, the miner died on December 6, 2006. Director's Exhibit 57. The miner's claim was remanded for consolidation with claimant's survivor's claim, which was filed on December 27, 2006. Director's Exhibit 48. The district director awarded benefits and employer requested a hearing, which was held on March 25, 2009. Thereafter, the administrative law judge issued her Decision and Order Granting Benefits, which is the subject of this appeal.

[2] Employer appealed the administrative law judge's award of benefits, listing two case numbers, representing both claims. Employer's appeal of the miner's claim was assigned BRB No. 10-0667 BLA, and the appeal in the survivor's claim was assigned BRB No. 10-0668 BLA. By Order dated September 2, 2010, the Board consolidated these appeals for purposes of decision only. *See Prater v. Bevins Branch Resources, Inc.*, BRB Nos. 10-0667 BLA and 10-0668 BLA (Sept. 2, 2010) (unpub. Order.)

On April 2, 2010, the administrative law judge issued an order asking for briefing from the parties regarding the applicability of amended Section 411(c)(4) and whether it was necessary to reopen the record for submission of additional evidence. In response, claimant and the Director, Office of Workers' Compensation Programs (the Director), asserted that the fifteen-year presumption, set forth at amended Section 411(c)(4), was applicable to both claims. Employer, however, maintained that the presumption could not be invoked because the miner did not have fifteen years of qualifying employment. Employer also asserted that rebuttal of the presumption was established by the evidence of record and, in the alternative, that retroactive application of the recent amendments is unconstitutional.

The administrative law judge issued a second order on June 21, 2010, also asking, *inter alia*, for briefing from the parties regarding whether the automatic entitlement provision, set forth in amended Section 422(*l*), applies in a consolidated case where the miner is contemporaneously awarded benefits. In response, claimant and the Director maintained that claimant would be entitled to derivative benefits pursuant to amended Section 422(*l*), in the event that the administrative law judge awarded benefits on the miner's claim. Employer, however, reiterated its position that retroactive application of the amendments is unconstitutional.

In her Decision and Order Granting Benefits dated August 12, 2010, the administrative law judge found that claimant was eligible to invoke the fifteen-year presumption at amended Section 411(c)(4), based on the filing date of the miner's claim. The administrative law judge accepted the parties' stipulation that the miner had at least twenty-nine years of coal mine employment. She further found, based on her review of the evidentiary record, that the miner worked five of those twenty-nine years in underground coal mine employment and the remainder in surface mining employment, where he was exposed to coal dust in conditions substantially similar to those of an underground coal mine. Thus, the administrative law judge found that claimant established that the miner had fifteen years of qualifying coal mine employment.

Additionally, based on employer's concession, and the evidence of record, the administrative law judge found that the miner had a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b). She, therefore, found that claimant was entitled to invoke the rebuttable presumption pursuant to amended Section 411(c)(4).[3] The administrative law judge also found that employer failed to rebut the presumption by

[3] The administrative law judge determined that the evidence was insufficient to establish that the miner had complicated pneumoconiosis and, thus, found that claimant was not entitled to the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Decision and Order at 22 n.12.

proving that the miner did not have pneumoconiosis or that his total disability did not arise out of, or in connection with, his coal mine employment. Accordingly, the administrative law judge awarded benefits on the miner's claim. With regard to the survivor's claim, the administrative law judge determined that claimant satisfied the eligibility requirements for derivative entitlement pursuant to amended Section 422(*l*) and awarded benefits.

On appeal, employer argues that the administrative law judge incorrectly found that the miner had the requisite number of years of qualifying coal mine employment, either in underground or surface mining. Employer contends that the administrative law judge erred in weighing the evidence on the issues of the existence of pneumoconiosis and disability causation. Employer also argues that retroactive application of Sections 411(c)(4) and 422(*l*) is unconstitutional, as it violates employer's right to due process and equal protection under the law. Additionally, employer argues that amended Section 422(*l*) is ambiguous and unenforceable because it creates irreconcilable inconsistencies in the Act. Claimant and the Director respond, urging affirmance of the award of benefits in both claims.

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.[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).

I. THE MINER'S CLAIM

A. Invocation of the Fifteen-year Presumption

As noted *supra*, the March 23, 2010 amendments to the Act reinstated Section 411(c)(4), which provides a rebuttable presumption that the miner was totally disabled due to pneumoconiosis, if he had fifteen or more years of qualifying coal mine employment, and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4). In this case, because the miner's claim was filed after January 1, 2005, and the parties' stipulated that he was totally disabled by a respiratory or pulmonary impairment prior to his death, claimant was eligible to invoke the rebuttable presumption at amended Section 411(c)(4), if the evidence established that the miner worked at least fifteen years in an underground coal mine or in a surface mine in conditions substantially similar to those in

[4] Because the miner's coal mine employment was in Kentucky, this case arises within the jurisdiction 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*); Director's Exhibit 3.

an underground mine. *See Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509 (7th Cir. 1988). Employer asserts that claimant failed to satisfy her burden to establish that the miner worked as a surface miner in conditions that were substantially similar to those of an underground mine, for purposes of invocation of the amended Section 411(c)(4) presumption.[5] We disagree.

In order for a surface miner to prove that his or her work conditions were substantially similar to those of an underground mine, the miner is only required to proffer sufficient evidence of dust exposure in his or her work environment. *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479, 22 BLR 2-265, 2-275 (7th Cir. 2001). It is then up to the administrative law judge "to compare the surface mining conditions established by the evidence to conditions known to prevail in underground mines." *Leachman*, 855 F.2d at 512.

In this case, the administrative law judge permissibly relied on the miner's deposition testimony, which she found was "roughly corroborated" by the Social Security Administration records, to credit the miner with five years of qualifying coal mine employment, between 1957-1961 and 1981-1982, as *an above ground worker at an underground mining operation*.[6] *See Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Brown v. Director, OWCP*, 7 BLR 1-730 (1985); A*lexander v. Freeman United Coal Mining Co.*, 2 BLR at 497, 1-501 (1979); Decision and Order at 21; Director's Exhibits 3, 7, 21.

In addition, with respect to the miner's employment at a strip mining operation, the administrative law judge considered whether claimant established that the miner worked in conditions that were substantially similar to those of an underground mine, taking into consideration the nature of his coal dust exposure as a surface miner. Decision and Order at 21-22. The administrative law judge summarized the relevant evidence as follows:

> In his deposition taken prior to his death, the [m]iner testified that he was always exposed to dust while strip mining because of wind and dust-

[5] Employer notes that all of the miner's work was performed above ground and asserts that there is "far lesser incidence of coal workers' pneumoconiosis among those individuals who have worked above ground." Employer's Brief in Support of Petition for Review at [18] (unpaginated).

[6] The miner testified at his deposition that he worked for M&W Coal Company from 1957 to 1961 and from 1981 to 1982, and that during his employment he drove a truck and "hauled coal from a deep mine." Director's Exhibit 21 at 8.

> producing equipment. [Director's Exhibit 21 at 8-9]. He testified that he would try to wear a mask while drilling, or at least tie a cloth over his nose and mouth, but he did not wear a mask when engaging in his ordinary mechanic duties with [e]mployer. *Id*. at 10. The mechanic work that he did for his prior employers was always performed outside; he did not work in a shop. *Id*. at 9. Claimant testified in some detail at the hearing that the [m]iner would come home from work covered in dust. [Hearing Transcript at 143]. He would spend an hour showering and cleaning his nose and ears. *Id*. Claimant would see mud at the bottom of the washing machine and would often have to wash his clothes through two or three cycles. *Id*. at 144.

Id. at 21-22. Thus, based on this testimony, the administrative law judge concluded that claimant established that the miner worked as a surface mine for at least ten years in conditions that were substantially similar to those of an underground coal mine, and that she satisfied her burden to prove at least fifteen years of qualifying coal mine employment for invocation of the presumption at amended Section 411(c)(4). *Id*. at 22.

Contrary to employer's assertion, the administrative law judge reasonably credited the *uncontradicted* testimony of the miner and claimant in finding that the miner's surface mine work exposed him to coal mine dust conditions that were substantially similar to those of an underground mine. *See Mabe*, 9 BLR at 1-68. The administrative law judge reasonably found that the miner's testimony regarding his work in surface mining as a truck driver, hauler, driller, equipment mechanic and explosive handler, suggested "heavy dust exposure." Decision and Order at 22; *see Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002); *Mabe*, 9 BLR at 1-68.

Furthermore, we reject employer's argument that the administrative law judge erred in finding that the miner had qualifying surface coal mine work in conditions that were substantially similar to those of underground mine, since "none of [the miner's] testimony specifically refers to 'coal dust.'" Employer's Brief in Support of Petition for Review at [18] (unpaginated). The administrative law judge found that, as a result of his surface mining employment, the miner was exposed to a mixture of hazardous rock and coal dust containing silica.[7] Decision and Order at 22. She reasonably inferred from the miner's description of his working conditions that his surface mine dust exposure was heavy and substantially similar to the conditions prevailing in underground mining.

[7] The administrative law judge noted Dr. Perper's characterization of the miner's coal dust exposure as "hazardous" because strip mining operations "produce rock dust and mixed dust containing silica." Decision and Order at 22 n. 11, *quoting* Claimant's Exhibit 1.

> These jobs are similar to those performed in an underground mine and exposed the [m]iner to comparable levels of dust, based on typical testimony by underground coal miners, who similarly complain about breathing dusty air and becoming covered with dust that is difficult to remove from their skin and clothes. Indeed, the dust to which the [m]iner was exposed was potentially more hazardous, given the mixed nature of the dust.

Id.; *see Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). Thus, because the administrative law judge properly conducted the analysis required by *Leachman,* we affirm her finding that the miner worked as a surface miner in conditions that were substantially similar to those of an underground mine. *See Summers*, 272 F.3d at 479-480, 22 BLR at 2-275; *Leachman*, 855 F.2d at 512. We also affirm, as supported by substantial evidence, the administrative law judge's finding that claimant established fifteen years of qualifying coal mine employment and that she is entitled to invoke the presumption pursuant to amended Section 411(c)(4).

B. Rebuttal of the Presumption

Employer's primary argument on appeal is that "claimant has not established" the requisite elements of entitlement. Employer's Petition for Review and Brief at [19] (unpaginated). Employer, however, bears the burden of establishing rebuttal of the amended Section 411(c)(4) presumption. In order to meet its burden on rebuttal, employer must prove, by a preponderance of all relevant evidence: (1) that the miner had neither clinical nor legal pneumoconiosis; or (2) that the miner's disabling respiratory or pulmonary impairment did not arise out of, or in connection with, his coal mine employment. *See* 30 U.S.C. §921(c)(4); *Blakley v. Amax Coal Co.*, 54 F.3d 1313, 19 BLR 2-192 (7th Cir. 1995); *Mitchell v. Director, OWCP*, 25 F.3d 500, 18 BLR 2-257 (7th Cir. 1994).

Contrary to employer's contention, the administrative law judge properly found that the "x-ray evidence in this case does not rebut a finding of clinical pneumoconiosis." Decision and Order at 26. The administrative law judge correctly noted that an x-ray dated August 29, 2005, was read by Dr. Rasmussen, a B reader, and by Drs. DePonte and Alexander, dually qualified Board-certified radiologists and B readers, as positive, but by Dr. Wheeler, also dually qualified, as negative for pneumoconiosis. Director's Exhibits 11, 15, 46; Claimant's Exhibit 2. She permissibly concluded that the August 29, 2005 x-ray "favor[s] a diagnosis of clinical pneumoconiosis," based on a preponderance of positive readings. Decision and Order at 26; *see Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993). The administrative law judge also correctly noted that a second x-ray, dated May 17, 2006, had only one reading, which

was positive for pneumoconiosis and, therefore, did not aid employer in establishing rebuttal. Decision and Order at 26; Director's Exhibit 46. Lastly, the administrative law judge permissibly found that the September 5, 2006 x-ray was positive for pneumoconiosis based on an uncontradicted positive reading by a dually qualified radiologist.[8] *See Woodward*, 991 F.2d at 321, 17 BLR at 2-87; Decision and Order at 26. Thus, we affirm, as supported by substantial evidence, the administrative law judge's finding that employer failed to rebut the presumption at amended Section 411(c)(4), by establishing that the miner did not have clinical pneumoconiosis, based on x-ray evidence.[9]

With regard to the autopsy evidence, the administrative law judge considered the autopsy report by Dr. Dennis, and the pathological reports of Drs. Perper and Caffrey. Dr. Dennis diagnosed coronary artery disease and progressive massive fibrosis, with a significant amount of silica present in the lungs. Director's Exhibit 46. Dr. Perper reviewed the autopsy slides and diagnosed simple pneumoconiosis and interstitial fibrosis, which he attributed in part to coal dust exposure. Claimant's Exhibit 1. In contrast, Dr. Caffrey reviewed the autopsy slides and found no evidence of pneumoconiosis. Employer's Exhibit 1. Dr. Caffrey reported that the miner had "findings consistent with usual interstitial pneumonitis," also known as idiopathic pulmonary fibrosis, of unknown origin. *Id*. He indicated that there was no relationship between the development of usual interstitial pneumonitis and coal dust exposure. *Id*.

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[8] The administrative law judge described the August 29, 2005 x-ray as having a "*positive* reading by Dr. Broudy, [a B reader] which was rebutted by a more qualified reader, Dr. DePonte, who also found pneumoconiosis." Decision and Order at 26 (internal citations omitted, emphasis added). Employer asserts that the administrative law judge erred in misstating Dr. Broudy's reading as being positive for pneumoconiosis, when it was in fact negative for pneumoconiosis, and that remand is required for further consideration of the x-ray evidence. *See* Employer's Exhibit 5. We disagree. The administrative law judge appears to have made a typographical mistake. Moreover, the administrative law judge's error is harmless, given her decision to credit the positive reading of the August 29, 2005 x-ray, based on Dr. DePonte's qualifications as a dually qualified radiologist. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[9] Employer erroneously contends that the administrative law judge erred in relying on the positive x-ray evidence for pneumoconiosis over the negative biopsy evidence, in finding that the miner had clinical pneumoconiosis. Director's Exhibits 46, 71. The regulations specifically provide that negative biopsy results are not conclusive of the non-existence of pneumoconiosis. 20 C.F.R. §718.106(c).

The administrative law judge gave little weight to Dr. Caffrey's opinion, noting that Dr. Perper prepared a "detailed report linking the [m]iner's interstitial fibrosis with exposure to coal mine dust." Decision and Order at 27. She further found that Dr. Perper persuasively explained why "a diagnosis by Dr. Caffrey of idiopathic pulmonary fibrosis of 'unknown' origin or of usual interstitial pneumonitis was unreasonable where a clear etiological cause exists: in this case, 'mixed coal dust containing silica.'" *Id*. *quoting* Claimant's Exhibit 1.

The administrative law judge has broad discretion in assessing the credibility of the medical experts and the Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14, 22 BLR 2-537, 553 (6th Cir. 2002); *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-495, 2-513 (6th Cir. 2002); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Thus, we affirm the administrative law judge's finding that employer did not rebut the amended Section 411(c)(4) presumption by establishing that the miner did not have clinical pneumoconiosis, based on the autopsy evidence.

Additionally, we reject employer's assertion that the administrative law judge erred in finding the medical opinion evidence to be insufficient to establish that the miner did not have legal pneumoconiosis for purposes of rebutting the presumption. As noted by the administrative law judge, the medical opinions of record are in conflict as to the existence of legal pneumoconiosis, specifically whether the miner's disabling respiratory impairment, caused by his interstitial lung disease, is due, in any part, to coal dust exposure.

The administrative law judge rationally determined that the opinions of Drs. Rasmussen and Perper, diagnosing silicosis and disabling interstitial fibrosis related to coal dust exposure, were reasoned and documented. *See Napier*, 301 F.3d at 713-14, 22 BLR at 2-553; *Stephens*, 298 F.3d at 522, 22 BLR at 2-513; *Clark*, 12 BLR at 1-151; Decision and Order at 29; Director's Exhibit 46; Claimant's Exhibit 1. She noted that Dr. Perper, in particular, explained that the miner's interstitial fibrosis was caused, in part, by coal dust exposure and was not truly "idiopathic," as the fibrosis found on autopsy contained anthracotic pigment and silica crystals, "consistent with the pattern of [the] interstitial type of coal workers' pneumoconiosis." Decision and Order at 29, *citing* Claimant's Exhibit 1.

Conversely, the administrative law judge found that, while Drs. Broudy and Dahhan opined that the miner had idiopathic fibrosis, of unknown origin, they did not

explain how they eliminated coal dust exposure as a cause for the miner's lung disease, and did not identify any etiology for the condition they diagnosed. Decision and Order at 29. With respect to Dr. Caffrey's assertion that the miner had no coal dust-related disease, because he had symptoms consistent with the idiopathic fibrosis and was also taking medication prescribed for patients with idiopathic fibrosis, the administrative law judge observed that "this does not exclude the possibility that the miner had two lung disease processes" or that his fibrosis was contributed to, or aggravated by, coal dust exposure.[10] Decision and Order at 32; Employer's Exhibit 1. The administrative law judge concluded that employer's evidence was insufficient to show that there was no "relationship between coal mine dust, in particular the mixed silica dust that the [m]iner encountered in strip mining operations" and his disabling fibrosis. Decision and Order at 29.

We reject employer's argument that the administrative law judge erred in requiring employer's experts to "exclude the possibility" that coal dust exposure contributed to or aggravated the miner's disabling respiratory condition, prior to finding rebuttal established. "[R]ebuttal requires an *affirmative showing* . . . that [the miner] does not suffer from pneumoconiosis, or that the disease is not related to coal mine work." *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, BLR (6th Cir. 2011) (emphasis added), *quoting Hatfield v. Sec'y of Health and Human Servs.*, 743 F.2d 1150, 1157 (6th Cir. 1984), *overruled on other grounds by Mullins Coal Co. v. Director, OWCP*, 484 U.S. 135 (1987); *see also Tennessee Consolidated Coal Co. v. Crisp*, 866 F.2d 179, 12 BLR 2-121 (6th Cir. 1989). In this case, the administrative law judge properly considered whether employer's experts had adequately explained the basis for their conclusions, as she is required to do as the trier-of-fact. *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); *Clark*, 12 BLR at 1-151. She rationally concluded that employer's evidence was not persuasive, as it did not affirmatively establish that there was no connection between the miner's coal mine employment and his pulmonary fibrosis.[11] *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); Decision and Order at 32.

[10] The administrative law judge considered Dr. Caffrey's opinion to be equivocal and insufficiently explained, as he stated the "the etiology of usual interstitial pneumonitis, *in most cases*, is unknown." Decision and Order (emphasis added) quoting Director's Exhibit 46. She noted that, while Dr. Caffrey opined that anthracotic pigment did not play a role in the miner's interstitial lung disease, he "did not indicate whether the silica particles that he found played any role." Decision and Order at 21.

[11] The administrative law judge noted that Dr. Perper referenced an article indicating that a diagnosis of idiopathic fibrosis is inappropriate when there is a major risk factor such mixed silica dust exposure, and that Dr. Rasmussen also cited to several articles showing a correlation between diffuse interstitial fibrosis and coal dust exposure.

Because employer has shown no clear error with respect to the administrative law judge's weighing of the medical opinion evidence on rebuttal, we affirm her credibility determinations. *See Napier*, 301 F.3d at 713-14, 22 BLR at 2-553; *Stephens*, 298 F.3d at 522, 22 BLR at 2-513; *Clark*, 12 BLR at 1-151. We therefore affirm, as supported by substantial evidence, her finding that employer did not satisfy its burden to establish rebuttal of the amended Section 411(c)(4) presumption by proving either that the miner did not have clinical or legal pneumoconiosis, or that the miner's disability did not arise out of, or in connection with, his coal mine employment. *See* 30 U.S.C. §921(c)(4); Decision and Order at 30-31. Thus, we affirm the award of benefits in the miner's claim.

II. THE SURVIVOR'S CLAIM

Employer asserts on appeal that retroactive application of amended Section 422(*l*) is unconstitutional. This argument, however, has been rejected. *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-198-200 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011) (Order) (unpub.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011); *see Keene v. Consolidation Coal Co.*, 645 F.3d 844, BLR (7th Cir. 2011). We affirm the administrative law judge's determination that claimant is entitled to derivative benefits pursuant to Section 422(*l*), as the miner was awarded benefits on his lifetime claim, claimant is an eligible survivor of the miner, and her claim was filed after January 1, 2005, and was pending on or after March 23, 2010. *See* 30 U.S.C. §932(*l*); *Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011).

Decision and Order at 32. She stated, "as Drs. Broudy and Dahhan did not cite any sources showing otherwise, and Dr. Caffrey's citations do not exclude the possibility, I accept the opinions shared by Drs. Perper and Rasmussen that the [m]iner's interstitial fibrosis was caused by or aggravated by coal dust exposure." *Id*.

Accordingly, the administrative law judge's Decision and Order Granting Benefits in the miner's claim and the survivor's claim is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge