BRB Nos. 12-0613 BLA
and 12-0614 BLA

GATHA SYKES (On behalf of and Widow of HAROLD SYKES) Claimant-Respondent v. SUN GLO COAL COMPANY, INCORPORATED and OLD REPUBLIC INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 08/30/2013 DECISION and ORDER

Appeal of the Decision and Order Awarding Living Miner's Benefits and Awarding Survivor's Benefits of William S. Colwell, Associate Chief Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for employer/carrier.

Michelle S. Gerdano (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: DOLDER, Chief Adminstrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Living Miner's Benefits and Awarding Survivor's Benefits (2007-BLA-5321 and 2007-BLA-5322) of Associate Chief Administrative Law Judge William S. Colwell, rendered on claims filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). The case has a lengthy procedural history and the relevant aspects are as follows: The miner filed a subsequent claim on March 1, 2001,[1] which was awarded by the district director on May 6, 2004. Director's Exhibits 3, 61. Employer requested a hearing and the case was forwarded to the Office of Administrative Law Judges (OALJ). Director's Exhibits 64, 66. While the case was pending before the OALJ, the miner died on December 24, 2004. Director's Exhibit 66. Claimant, the miner's widow, filed a survivor's claim on March 7, 2005, and the miner's claim was returned to the district director for consolidation with the survivor's claim. Director's Exhibits 67-69. On September 12, 2005, the district director issued a Proposed Decision and Order denying survivor's benefits. Director's Exhibit 70. Claimant filed a timely request for modification of the denial of her survivor's claim, and the district director awarded benefits on October 18, 2006. Director's Exhibit 85. A hearing was held with respect to both claims on June 3, 2008, before Administrative Law Judge Edward Tehune Miller. Before issuance of a decision, Judge Miller retired and the case was reassigned to Judge Colwell (the administrative law judge). On July 30, 2012, the administrative law judge issued a Decision and Order Awarding Living Miner's Benefits and Awarding Survivor's Benefits, which is the subject of this appeal.

With respect to the miner's claim, the administrative law judge determined that claimant demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, as the newly submitted evidence established that the miner was totally disabled.[2] In consideration of the merits of entitlement, the administrative law judge

[1] The miner filed an initial claim for benefits on September 19, 1989, which was denied by the district director on February 23, 1990, for failure to establish any element of entitlement. Director's Exhibit 1. No further action was taken by the miner until he filed his March 1, 2001 subsequent claim.

[2] Because the miner's subsequent claim was filed prior to January 1, 2005, amendments to the Black Lung Benefits Act, contained in the Patient Protection and

found that claimant established that the miner was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a), 718.203, 718.204(b), (c). Accordingly, benefits were awarded in the miner's claim, commencing March 2001, the month in which the subsequent claim was filed.

Based on the filing date of the survivor's claim, and the administrative law judge's determinations that the miner worked at least fifteen years in underground coal mine employment and suffered from a totally disabling respiratory impairment, the administrative law judge found that claimant was entitled to the rebuttable presumption that the miner's death was due to pneumoconiosis at amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[3] The administrative law judge further found that employer failed to rebut that presumption. Accordingly, the administrative law judge found that claimant demonstrated a mistake in a determination of fact pursuant to 20 C.F.R. §725.310, and he awarded survivor's benefits, commencing December 2004, the month in which the miner died.

On appeal, employer challenges the administrative law judge's findings that claimant satisfied her burden to establish that the miner was totally disabled due to pneumoconiosis. Employer further challenges the administrative law judge's determination, in the survivor's claim, that claimant was entitled to the amended Section 411(c)(4) presumption, and that employer did not rebut that presumption, by disproving that the miner's death was due to pneumoconiosis. Relevant to both claims, employer specifically contends that the administrative law judge failed to explain how he resolved the conflict in the evidence, as required by the Administrative Procedure Act (APA).[4] Employer also argues that the administrative law judge improperly relied on the preamble

---

Affordable Care Act, *see* 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119, 260 (2010), are not applicable.

[3] Amended Section 411(c)(4) provides for a rebuttable presumption that the miner's death was due to pneumoconiosis, if the miner worked at least fifteen years of underground coal mine employment, or employment in conditions substantially similar to those in an underground mine, and also suffered from a totally disabling respiratory or pulmonary impairment. *See* 30 U.S.C. §921(c)(4).

[4] The Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), requires that an administrative law judge set forth the rationale underlying his or her findings of fact and conclusions of law. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

to the regulations in determining the weight to accord the medical experts. Claimant responds, urging affirmance of the award of benefits in both claims. The Director, Office of Workers' Compensation Programs, has filed a limited response, asserting that the administrative law judge permissibly consulted the preamble in weighing the credibility of the evidence. Employer has also filed a reply brief, reiterating its arguments that benefits were erroneously awarded 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.[5] 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

In order to establish entitlement to benefits under 20 C.F.R. Part 718, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis was totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. 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); *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 because he failed to establish any of the requisite elements, claimant had to prove one element to in order to obtain review of the merits of the miner's claim.[6] *See White*, 23 BLR at 1-3.

[5] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, because the miner's most recent coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Director's Exhibits 1, 70-3.

[6] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established that the miner had a totally disabling respiratory impairment under 20 C.F.R. §718.204(b)(2), and thereby proved a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

A. Existence of Legal Pneumoconiosis

We first address employer's argument that the administrative law judge erred in finding that the miner suffered from legal pneumoconiosis.[7] Pursuant to 20 C.F.R. §718.202(a)(2), the administrative law judge considered the autopsy reports of Drs. Blake, Oesterling, and Caffrey. Dr. Blake, Board-certified in anatomic, clinical and forensic pathology, conducted the autopsy of the miner on December 24, 2004. Director's Exhibit 82. On gross examination, Dr. Blake described the right lung as having a large malignant neoplasm and "dark anthracotic pigmentation in the non-tumor areas." *Id*. He further described the left lung as "heavily anthracotic and prominently emphysematous." *Id*. On microscopic examination, Dr. Blake noted areas of interstitial fibrosis with "relatively small areas of anthracosis." *Id*. He stated that, "[t]here are no areas of specific nodules representing the requisite plaques of fibrosis from the Coal Workers' Pneumoconiosis. The predominant pathology is the presence of the extreme degree of emphysema with admixed anthracosis." *Id*. The final primary findings included poorly differentiated adenocarcinoma of the lungs with extensive areas of necrosis and "pulmonary emphysema, pan-lobular and bullous, bilateral, severe." *Id*. The mechanism of death was listed as aspiration asphyxia caused by "pulmonary parenchymal compromise" due to adenocarcinoma and emphysema. *Id*.

Dr. Oesterling reviewed the eight autopsy slides of the miner's lung, along with other evidence provided by employer, and prepared a report dated August 5, 2005.[8] Director's Exhibit 70. Dr. Oesterling noted mild microdular coal workers' pneumoconiosis, but opined that the level of the disease was insufficient to have altered pulmonary function or caused lifetime disability. *Id*. He agreed with Dr. Blake's findings of extensive chronic pulmonary disease, in the form of panlobular emphysema, progressing to severe bullous emphysema. *Id*. Dr. Oesterling opined that the miner's

[7] "'Legal pneumoconiosis'" includes 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).

[8] Dr. Oesterling also prepared an April 12, 2008 report, based on his review of a small tissue sample of the miner's lung obtained by needle biopsy. Miner's Claim (MC) Employer's Exhibit 6. The administrative law judge, however, stated that he considered "the pathologists' review of autopsy slides to be the most probative" regarding the presence or absence of pneumoconiosis. Decision and Order at 19 n. 6. Because the administrative law judge properly relied on the autopsy evidence, we will not summarize Dr. Oesterling's opinion relevant to the biopsy. *See Terlip v. Director, OWCP*, 8 BLR 1-363 (1985).

emphysema was unrelated to coal dust exposure. *Id*. Referencing an article from a British medical journal, Dr. Oesterling noted that panlobular emphysema "is not related to coal mine dust exposure." *Id*. In conclusion, Dr. Oesterling opined that the miner died as a result of adenocarcinoma with related fibrosis and severe aspiration pneumonia, all factors that were unrelated to the miner's coal mine employment. *Id*.

Dr. Caffrey prepared a report dated May 13, 2008, based on his review of the eight autopsy slides and certain medical records. Miner's Claim (MC) Employer's Exhibit 8. Dr. Caffrey distinguished his findings from the autopsy prosector, noting that while Dr. Blake described "possible black lung disease," he saw definite "lesions of simple pneumoconiosis." *Id*. Dr. Caffrey's findings included "pleomorphic adenocarcinoma" of the left lung with diffuse necrosis, acute bronchopneumonia in both lungs, moderate to severe centrilobular and panlobular emphysema in both lungs, mild simple coal workers' pneumoconiosis, and moderate to severe atherosclerosis. *Id*. He opined that the miner's death was unrelated to coal dust exposure. *Id*.

The administrative law judge found that that the pathologists were "qualified to render opinions" and "[b]ased on a preponderance of their findings, the autopsy data demonstrates the presence of simple, clinical coal workers' pneumoconiosis . . . and "the presence of severe emphysema." Decision and Order at 21. The administrative law judge further indicated that he gave greatest weight to Dr. Caffrey's findings of a "moderate to severe degree of centrilobular and panlobular emphysema."[9] Decision and Order at 21.

The administrative law judge addressed the etiology of the miner's emphysema at 20 C.F.R. §718.202(a)(4), weighing the opinions of the pathologists, along with the medical opinions of Drs. Perper, Rasmussen, Baker, and Dahhan.[10] Decision and Order at 22. In finding that the miner suffered from legal pneumoconiosis, the administrative

[9] The administrative law judge also noted that the record contained, "other medical evidence" under 20 C.F.R. §718.107, that supported a finding of emphysema. Specifically, Dr. Wiot interpreted two CT scans dated September 26, 2002 and August 1, 2003, each of which he described as showing "bullous changes and emphysema." MC Employer's Exhibit 1. Dr. Mullens also interpreted the September 26, 2002 scan as showing "centrilobular and paraseptal emphysema." Director's Exhibit 40.

[10] The administrative law judge found that Dr. Dahhan gave "a somewhat confusing diagnosis" during his deposition, insofar as he testified that the miner had both "medical and legal pneumoconiosis," despite his earlier explanation in reports dated May 26, 2002 and April 5, 2006, that the miner's chronic bronchitis was unrelated to coal dust exposure. Decision and Order at 34-35; *see* MC Employer's Exhibits 4, 5.

law judge gave controlling weight to the opinions of Drs. Perper and Rasmussen,[11] that the miner had chronic obstructive lung disease (COPD)/emphysema caused by a combination of coal dust exposure and smoking because he found their opinions were reasoned and documented, and consistent with the preamble to the regulations. *Id*. at 34. With respect to the autopsy finding of centrilobular emphysema, the administrative law judge noted the following statement by the Department of Labor (DOL) in the preamble:

> Centrilobular emphysema . . . was significantly more common among the coal workers. The severity of the emphysema was related to the amount of dust in the lungs. *These findings held even after controlling for age and smoking habits.*

Decision and Order at 39, quoting 65 Fed. Reg. 79,941 (Dec. 20, 2000) (emphasis added). The administrative law judge indicated that he was persuaded by Dr. Perper's opinion that the miner's centrilobular emphysema was caused by coal dust exposure, and also noted that the medical opinions of Drs. Rasmussen and Baker supported such a conclusion. Additionally, the administrative law judge noted that Dr. Oesterling concluded that coal dust may cause centrilobular emphysema, dependent on the degree of coal dust in the lungs. Based on his weighing of all of the autopsy findings and medical reports, the administrative law judge concluded that claimant established that the miner suffered from legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Employer challenges the administrative law judge's determination that claimant established the existence of legal pneumoconiosis. Initially, we reject employer's contention that the administrative law judge did not explain the basis for his finding that the miner suffered from centrilobular emphysema. The administrative law judge noted that Dr. Caffrey was a qualified pathologist and explained that he credited Dr. Caffrey's finding of centrilobular emphysema, as it was reasoned and supported, to some degree, by Dr. Oesterling's deposition testimony. The administrative law judge explained:

[11] Dr. Rasmussen examined the miner on June 16, 2003 and opined that he was totally disabled by chronic obstructive lung disease caused by smoking and coal mine dust exposure. MC Claimant's Exhibit 2. Dr. Perper reviewed the miner's autopsy slides, although the administrative law judge determined that this portion of his opinion was inadmissible. Dr. Perper also reviewed the miner's biopsy report, the death certificate, the autopsy report of Dr. Blake, the miner's medical records, x-rays and the examination findings of the record physicians. MC Claimant's Exhibit 2. Dr. Perper opined that the miner suffered from coal workers' pneumoconiosis and centrilobular emphysema, attributable to the miner's exposure to silica in coal mine employment. *Id.*

> Turning to centrilobular emphysema, Dr. Caffrey specifically identified this form of emphysema in the [m]iner's lung tissue. Dr. Blake did not address the presence or absence of this type of emphysema. And, Dr. Oesterling initially denied its presence in the tissue, but then stated during his deposition that it could have been present and could have progressed to panlobular emphysema. . . . *This tribunal is persuaded by Dr. Caffrey's observations.*

Decision and Order at 20 (emphasis added). The administrative law judge also noted that Dr. Mullens identified centrilobular emphysema on a September 26, 2002 CT scan. *Id*. at 22. Because the administrative law judge's finding regarding the existence of centrilobular emphysema is properly explained in accordance with the APA, and is supported by substantial evidence, that finding is affirmed. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

Turning to the etiology of the miner's COPD/centrilobular emphysema, employer argues that the administrative law judge erred in assessing the credibility of the opinions of the medical experts, based on whether they expressed views consistent with the preamble to the regulations. Employer argues that the administrative law judge improperly gave the preamble "the force and effect of law" and erred in applying the general conclusions reached in the preamble to the individual facts of this case, "without benefit of any medical testimony." Employer's Brief in Support of Petition for Review at 17-18. In so doing, employer contends that the administrative law judge improperly assumed the role of a medical expert. Employer's assertions of error, however, are rejected as they are without merit.

The preamble sets forth the resolution by the DOL of questions of scientific fact concerning the elements of entitlement that a claimant must establish in order to secure an award of benefits. *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); *Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 23 BLR 2-18 (7th Cir. 2004). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has specifically stated that an administrative law judge may evaluate expert opinions in conjunction with the DOL's discussion of sound medical science in the preamble.[12] *See A & E Coal Co. v. Adams*, 694 F.3d 798,

[12] We also reject employer's contention that the case should be remanded "in order to allow employer the opportunity to address the preamble with evidence." Employer's Brief in Support of Petition for Review at 18. The preamble does not constitute evidence outside the record requiring the administrative law judge to give notice and an opportunity to respond. *See A & E Coal Co. v. Adams*, 694 F.3d 798, 801-03, 25 BLR 2-203, 2-210-12 (6th Cir. 2012).

25 BLR 2-203 (6th Cir. 2012); *see also Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *J.O.* [*Obush*] *v. Helen Mining Co*., 24 BLR 1-117, 1-125-26 (2009), *aff'd Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 24 BLR 2-369 (3d Cir. 2011).

In this case, the administrative law judge noted correctly that while Dr. Oesterling opined, in part, that the miner's severe emphysema was not due to coal dust exposure, based on the low profusion of his simple pneumoconiosis and the absence of progressive fibrosis, the DOL has recognized that coal dust exposure alone can lead to disabling emphysema and does not require a showing of either simple or complicated pneumoconiosis. Decision and Order at 38, citing 65 Fed. Reg. 79,941 (Dec. 20, 2000). We, therefore, see no error in the administrative law judge's determination that Dr. Oesterling's opinion, in part, is inconsistent with the preamble.

Moreover, as an additional basis for according less weight to Dr. Oesterling's opinion, the administrative law judge rationally found that while Dr. Oesterling concedes that centrilobular emphysema may be present in the miner's lungs and that centrilobular emphysema may progress to panlobular emphysema (the type of emphysema he observed), he "does not adequately explain" the basis for his opinion that the miner's emphysema was unrelated to his coal mine employment. Decision and Order at 39; *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). Because the administrative law judge has discretion, as the trier of fact, to determine the credibility of the medical experts, we affirm the administrative law judge's decision to give less weight to Dr. Oesterling's opinion. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483 n.7, 22 BLR 2-265, 2-281 n.7 (7th Cir. 2001).

Furthermore, contrary to employer's assertion, we see no error in the administrative law judge's determination that Dr. Dahhan's opinion, excluding coal dust exposure as a cause for the miner's respiratory condition, was not reasoned. The administrative law judge rationally found that Dr. Dahhan's opinion, that the miner's chronic bronchitis was not attributable to coal dust exposure because the miner stopped working in the mines in 1989, was inconsistent with the regulation at 20 C.F.R. §718.201(c), which recognizes that pneumoconiosis may be latent and progressive, and "may first become detectable only after the cessation of coal mine dust exposure." Decision and Order at 35-36; *see generally Peabody Coal Co. v. Odom*, 342 F.3d 486, 22 BLR 2-612 (6th Cir. 2003). Additionally, the administrative law judge permissibly

rejected Dr. Dahhan's explanation that the miner did not suffer from a coal-dust related lung disease, based on the fact that he demonstrated reversibility on pulmonary function testing after the use of a bronchodilator, since the administrative law judge properly found that the more recent pulmonary function tests, obtained in conjunction with the subsequent claim, were qualifying for total disability, and Dr. Dahhan "did not address the cause or causes of the *irreversible*, totally disabling component of [the miner's] lung disease."[13] Decision and Order at 37 (emphasis added); *see Barrett*, 478 F.3d at 356, 23 BLR at 2-484; *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003).

In contrast, we conclude that the administrative law judge permissibly relied on the opinions of Drs. Rasmussen and Perper to find that the miner suffered from coal dust-induced emphysema. The administrative law judge reasonably considered the opinions of Drs. Rasmussen and Perper to be "more consistent with the scientific premises underlying the regulations as set forth in the preamble," that exposures to coal dust and smoking cause similar types of emphysema. Decision and Order at 39-40, *citing* 65 Fed. Reg. 79,939 (Dec. 20, 2000); *see Summers*, 272 F.3d at 483 n.7, 22 BLR at 2-281 n.7. Because the administrative law judge permissibly determined that the opinions of Drs. Perper and Rasmussen were reasoned and documented, we affirm the administrative law judge's finding that claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 306-08, 23 BLR 2-261, 2-284-87 (6th Cir. 2005); *Napier*, 301 F.3d at 713-14, 22 BLR 2-553.

B. Disability Causation

Pursuant to 20 C.F.R. §718.204(c), employer argues that the administrative law judge "failed to apply the test set out in the regulations" to determine whether [the miner's coal dust exposure had "a material adverse effect" on the miner's respiratory disability, and that he did not explain the bases for his credibility determinations in accordance with the APA. Employer's Brief in Support of Petition for Review at 23, citing *Island Creek Coal Co. v. Calloway*, 460 F. App'x. 504 (6th Cir. 2012) (unpub.). We disagree.

The administrative law judge observed correctly that pneumoconiosis must be a "substantially contributing cause" of the miner's total disability in order for claimant to satisfy her burden of proof at 20 C.F.R. §718.204(c). Decision and Order at 47. He also

[13] The administrative law judge found that all of the recent ventilatory studies yielded qualifying values and that three of the studies "included post-bronchodilator trials, all of which produced qualifying values." Decision and Order at 36.

noted correctly that pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:

> (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
>
> (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1); *see* Decision and Order at 47.

In considering whether disability causation was established, the administrative law judge noted that "Drs. Oesterling, Dahhan, and Perper agree that the [m]iner suffered from severe emphysema and that this emphysema contributed to the [m]iner's overall respiratory disability." Decision and Order at 48. The administrative law judge reiterated his prior finding, with respect to the existence of legal pneumoconiosis, that the opinions of Drs. Rasmussen and Perper establish that the miner's disabling COPD/emphysema was caused by both smoking and coal dust exposure. *Id.*; *see Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2004) (a medical opinion that pneumoconiosis "was one of two causes" of total disability meets the "substantially contributing cause" standard at 20 C.F.R. §718.204(c)). Thus, because the administrative law judge explained his findings pursuant to 20 C.F.R. §718.204(c) in accordance with the APA, and his conclusion that the miner was totally disabled due to pneumoconiosis is supported by substantial evidence, it is affirmed. *See Wojtowicz*, 12 BLR at 1-165. We therefore affirm the award of benefits in the miner's claim. *See Grundy Mining Co. v. Flynn*, 353 F.3d 467, 483, 23 BLR 2-44, 70 (6th Cir. 2003); *Peabody Coal Co. v. Smith*, 127 F.3d 504, 507, 21 BLR 2-180, 2-185-86 (6th Cir. 1997).

II. The Survivor's Claim

The administrative law judge awarded benefits in the survivor's claim pursuant to amended Section 411(c)(4), finding that claimant invoked the presumption that the miner's death was due to pneumoconiosis, and that employer did not rebut the presumption. However, under amended Section 932(*l*), a survivor of a miner who was determined to be 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. Because claimant filed her survivor's claim after January 1, 2005; she is an eligible survivor of the miner; her claim was pending on March 23, 2010; and the miner has been determined to be eligible to receive benefits at the time of his death, we conclude that claimant is automatically entitled to benefits, as a matter of

law, pursuant to amended Section 932(*l*).[14] 30 U.S.C. §932(*l*). Therefore, we affirm the award of benefits in the survivor's claim on this alternate ground.

[14] In light of our disposition of claimant's survivor's claim pursuant to amended Section 932(*l*), it is not necessary that we address employer's argument that the administrative law judge erred in finding that employer did not establish rebuttal of the presumption of death due to pneumoconiosis at amended Section 411(c)(4).

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

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge