U.S. Department of Labor

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

BRB No. 16-0628 BLA

ROSE M. MARTIN (Widow of GARY R. MARTIN) Claimant-Petitioner v. SOUTHERN OHIO COAL COMPANY Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 08/31/2017 DECISION and ORDER

Appeal of the Decision and Order Denying Modification and Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Rose M. Martin, Barrackville, West Virginia.

Andrea L. Berg (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

BEFORE: HALL, Chief Administrative Appeals Judge, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals, without the assistance of counsel, the Decision and Order Denying Modification and Benefits (2014-BLA-05628) of Administrative Law Judge Natalie A. Appetta on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves claimant's request for modification of a survivor's claim filed on May 28, 2010.

In the initial decision issued on December 19, 2012, Administrative Law Judge Richard A. Morgan credited the miner with twenty years of underground coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. Based on his determination that the evidence did not establish that the miner had a totally disabling respiratory impairment, Judge Morgan found that claimant could not invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] Considering whether claimant could establish entitlement to benefits without the aid of the presumption, Judge Morgan found that while claimant established that the miner had pneumoconiosis pursuant to 20 C.F.R. §718.202(a), she did not establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(b).[3] Accordingly, Judge Morgan denied benefits.[4]

[1] Claimant is the surviving spouse of the miner, who died on July 7, 2006. Director's Exhibit 14. As summarized by the administrative law judge, the record reflects that in 1990 the miner was diagnosed with renal carcinoma, which eventually metastasized to his lungs and contributed to his death. Decision and Order at 8; Director's Exhibit 40 at 21-24.

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that the miner's death was due to pneumoconiosis if she establishes that the miner had 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 at the time of his death. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

[3] The Department of Labor revised the regulation at 20 C.F.R. §718.205, effective October 25, 2013. 78 Fed. Reg. 59,102, 59,114 (Sept. 25, 2013). Thus, the provisions that were applied by the administrative law judge at 20 C.F.R. §718.205(c) are now set forth at 20 C.F.R. §718.205(b).

[4] Section 422(*l*) of the Act provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*). Claimant cannot benefit from this provision, as

Claimant appealed, but also asked to submit further evidence and seek new counsel while the appeal was pending, which the Board construed as a request for modification. *See* 20 C.F.R. §725.310; *Martin v. S. Ohio Coal Co.*, BRB No. 13-0200 BLA (Oct. 30, 2013) (Order) (unpub.). Thus, the Board dismissed the appeal and remanded the case to the district director for modification proceedings. *Id*. Because no additional evidence was submitted while the case was pending before the district director, on May 23, 2014 the claim was returned to the Office of Administrative Law Judges for hearing.

In a Decision and Order issued on July 25, 2016, which is the subject of this appeal, Administrative Law Judge Natalie A. Appetta (the administrative law judge) agreed with Judge Morgan that although the miner worked for at least fifteen years in qualifying coal mine employment, the evidence did not establish that the miner was totally disabled. Therefore, the administrative law judge found that claimant could not invoke the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis. The administrative law judge further agreed with Judge Morgan that although claimant established that the miner had pneumoconiosis pursuant to 20 C.F.R. §718.202(a), she did not establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(b). The administrative law judge found, therefore, that a basis for modification at 20 C.F.R. §725.310 was not established. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds in support of the administrative law judge's decision. The Director, Office of Workers' Compensation Programs, has not filed a response brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986). We must affirm the administrative law judge's decision if it is rational, supported by substantial evidence, and consistent with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated by

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there is no evidence that the miner was determined to be eligible to receive benefits at the time of his death.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; May 9, 2016 Hearing Transcript at 26.

30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on survivors' claims when the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A miner's death is considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, the presumption relating to complicated pneumoconiosis set forth at 20 C.F.R. §718.304 is applicable, or the presumption set forth at 20 C.F.R. §718.305 is invoked and not rebutted.[6] 20 C.F.R. §718.205(b)(1)-(4). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(b)(6).

The sole ground for modification in a survivor's claim is that a mistake in a determination of fact was made in the prior denial. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989). The administrative law judge has broad discretion to correct mistakes of fact, including the ultimate fact of entitlement. *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230, 18 BLR 2-290, 2-996 (6th Cir. 1994). The administrative law judge is authorized "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971).

Invocation of the Section 411(c)(4) Presumption – Total Disability

Under Section 411(c)(4) of the Act, Act, 30 U.S.C. §921(c)(4), and its implementing regulation, 20 C.F.R. §718.305, there is a rebuttable presumption that a miner's death was due to pneumoconiosis if the miner had fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment. As the administrative law judge found that the miner had more than fifteen years of qualifying coal mine employment, the administrative law judge considered whether claimant could invoke the presumption of death due to pneumoconiosis by establishing that the miner had a totally disabling respiratory impairment at the time of his death, pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Decision and Order at 12.

[6] The administrative law judge found that there is no evidence of complicated pneumoconiosis in the record. Decision and Order at 9. Consequently, claimant is not entitled to the Section 411(c)(3) irrebuttable presumption that the miner's death was due to pneumoconiosis. 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304.

In the absence of contrary probative evidence, a miner's disability shall be established by pulmonary function studies showing values equal to, or less than, those in Appendix B; blood gas tests showing values equal to, or less than, those set forth in Appendix C; evidence establishing cor pulmonale with right-sided congestive heart failure; or if a physician exercising reasoned medical judgment concludes that a miner's respiratory or pulmonary condition prevented the miner from performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(i)-(iv). If total disability has been established under one or more subsections, the administrative law judge must weigh the evidence supportive of a finding of total disability against the contrary probative evidence to determine whether total disability has been established by a preponderance of the evidence. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-20-21 (1987).

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered the results of three pulmonary function studies contained in the miner's treatment records, dated October 21, 2002, March 6, 2003, and March 15, 2005. Decision and Order at 13-14; Director's Exhibits 15 at 19, 16. The October 21, 2002 study yielded non-qualifying[7] pre-bronchodilator values and no post-bronchodilator study was performed. Director's Exhibit 15 at 19. The March 6, 2003 study yielded non-qualifying values both before, and after, the administration of a bronchodilator. Director's Exhibit 16. In contrast, the March 15, 2005 study yielded qualifying values both before and after administration of a bronchodilator. Director's Exhibit 16.

In weighing the pulmonary function studies, the administrative law judge considered Dr. Tuteur's testimony that the results of the qualifying March 15, 2005 study could not be verified due to missing data. Decision and Order at 13-14; Employer's Exhibit 1 at 17-18. Dr. Tuteur explained that because "neither graphic data nor serial numerical data" was available, he could not assess whether the test was an accurate assessment of the miner's pulmonary function. Employer's Exhibit 1 at 18. The administrative law judge further noted that Appendix B to Part 718, which sets forth standards for the administration and interpretation of pulmonary function studies, provides that "[t]ests shall not be performed during or soon after an acute respiratory illness," and that the March 15, 2005 study was obtained during a period of treatment and hospitalization.[8] Decision and Order at 14, *citing* Appendix B to 20 C.F.R Part 718. For

[7] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

[8] The miner's treatment records indicate that he was hospitalized from February 25, 2005 to February 27, 2005 with a history of progressing dyspnea, coughing, productive sputum, and bilateral flank pain. Director's Exhibit 16. Treatment records

these reasons, the administrative law judge found that the March 15, 2005 test is of "little probative value." Decision and Order at 14.

Initially, we note that the March 15, 2005 pulmonary function study is not subject to the specific quality standards set forth in Appendix B, as it was not generated in connection with a claim for benefits. *See* 20 C.F.R. §718.101(b); *accord J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-89, 1-92 (2008) (holding that quality standards are not applicable to hospitalization and treatment records). An administrative law judge must still determine, however, if the pulmonary function study results are sufficiently reliable to support a finding of total disability, despite the inapplicability of the specific quality standards.[9] Here, the administrative law judge permissibly questioned the reliability of the March 15, 2005 qualifying pulmonary function study results based, in part, on Dr. Tuteur's explanation that the accuracy of the results could not be assessed due to missing data. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528, 21 BLR 2-323, 2-326 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-75-76 (4th Cir. 1997); Decision and Order at 13-14; Employer's Exhibit 1 at 17-18. Thus, the administrative law judge's error in finding that the study also contravened the specific quality standards set forth at Appendix B is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278 (1984). Because the administrative law judge permissibly discredited the only qualifying pulmonary function study of record, we affirm the

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further indicate that the miner was hospitalized again from March 17, 2005 to March 22, 2005 for chest congestion and productive cough. *Id.* The miner's discharge diagnoses on March 22, 2005 include dyspnea due to bronchial compression from metastatic renal cell carcinoma, diabetes mellitus, chronic obstructive pulmonary disease, atrial fibrillation, panic disorder, and hypertension. *Id.*

[9] The Department of Labor explained in the comments to the 2001 revised regulations that evidence that is not subject to the quality standards must still be assessed for reliability by the fact finder:

> The Department note[s] that [20 C.F.R.] §718.101 limits the applicability of the quality standards to evidence "developed * * * in connection with a claim for benefits" governed by 20 C.F.R. [P]arts 718, 725, or 727. Despite the inapplicability of the quality standards to certain categories of evidence, the adjudicator still must be persuaded that the evidence is reliable in order for it to form the basis for a finding of fact on an entitlement issue.

65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000).

administrative law judge's finding that the pulmonary function study evidence does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i).[10]

The administrative law judge's evaluation of the blood gas study evidence at 20 CFR §718.204(b)(2)(ii), however, cannot be affirmed. The administrative law judge considered an undated blood gas study contained in the miner's treatment records, and noted correctly that it was non-qualifying[11] for total disability. Decision and Order at 14; Director's Exhibit 16. We note, however, that the miner's treatment records contain additional blood gas studies, which the administrative law judge did not address, and which may be probative as to whether the miner suffered from a disabling respiratory impairment.[12] Director's Exhibit 16. As it is unclear whether the administrative law judge considered these studies, or what weight she accorded them, the administrative law judge's evaluation of the blood gas study evidence contravenes the requirements of the Administrative Procedure Act (APA). 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a) (the administrative law judge must consider all relevant evidence, render findings on all material issues of fact or law, and set forth the rationale underlying her findings); *see Wojtowicz*, 12 BLR at 1-165. We therefore vacate the administrative law judge's finding that the blood gas study evidence does not establish total disability at 20 C.F.R. §718.204(b)(2)(ii), and remand the case for further consideration. On remand, the administrative law judge must weigh all of the blood gas study evidence, together with any evidence relevant to the reliability of the blood gas

[10] We further affirm, as supported by substantial evidence, the administrative law judge's finding that claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iii) because the record contains no evidence that the miner had cor pulmonale with right-sided congestive heart failure. *See Martin v. Ligon Preparation Co*., 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); Decision and Order at 14.

[11] A "qualifying" 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, Appendix C. A "non-qualifying" study produces results that exceed those values. See 20 C.F.R. §718.204(b)(2)(ii).

[12] A West Virginia University Hospital Lab Results spreadsheet contains results of arterial blood gas studies dated May 11, 2004; February 27, 2005; June 15, 2006; June 16, 2006; June 17, 2006; two studies dated June 18, 2006; two studies dated June 19, 2006; two studies dated June 20, 2006; June 21, 2006; June 22, 2006; two studies dated June 23, 2006; June 26, 2006; July 2, 2006; July 4, 2006; and July 5, 2006. Director's Exhibit 16.

study results, and explain her findings.[13] *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53, 25 BLR 2-779, 2-788 (4th Cir. 2016); *Hicks*, 138 F.3d at 535, 21 BLR at 2-340; *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact-finder's failure to discuss relevant evidence requires remand).

We further find error in the administrative law judge's evaluation of the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv), relevant to whether the miner suffered from a disabling respiratory impairment prior to his death. The administrative law judge considered the opinions of Drs. Dedhia,[14] Graeber,[15] Tuteur,[16] Bush,[17] Tomashefski,[18] and

[13] We note that many of these blood gas studies were conducted while the miner was sick or hospitalized. Director's Exhibit 16. In evaluating this evidence, the administrative law judge should be mindful that although objective testing contained in treatment records is not subject to the quality standards at 20 C.F.R. §718.105 and Appendix C, the administrative law judge must nonetheless be persuaded as to the reliability of the test results. *See* 20 C.F.R. §718.101(b); *accord J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-89, 1-92 (2008); *see also* 65 Fed. Reg. at 79,928.

[14] Dr. Dedhia, a professor of pulmonary and critical care medicine at West Virginia University Hospital and a treating physician during the five years preceding the miner's death, opined that the miner had "multiple medical problems including respiratory failure" and died as a result of "respiratory failure from metastatic lung disease (renal tumor)." Director's Exhibit 14.

[15] Dr. Graeber, a professor of surgery in the thoracic and cardiovascular surgery section at West Virginia University School of Medicine, who was the miner's thoracic surgeon for the last six years of his life, opined that the miner suffered from advanced stage IV renal cell carcinoma that spread to his lungs. Director's Exhibit 14. Dr. Graeber stated that "[the miner's] treatment was compromised by the fact that he suffered from coal worker's pneumoconiosis (black lung), which resulted in chronic respiratory insufficiency." *Id*.

[16] Dr. Tuteur, who is Board-certified in internal and pulmonary medicine and an associate professor of medicine at Washington University in St. Louis, reviewed the miner's medical records and opined that the miner died from progressive metastatic renal cell carcinoma. Director's Exhibit 40. Further, Dr. Tuteur noted that the spread of the cancer to the miner's lungs "led to respiratory failure" prior to the miner's death. *Id*.; *see* Employer's Exhibit 1 at 23-24. Dr. Tuteur emphasized, however, that "no chronic dust disease of the lungs caused respiratory impairment or disability" during the miner's life because although the miner had silicosis, it was not clinically significant. Director's Exhibit 40.

Crouch,[19] together with the physicians' qualifications.[20] The administrative law judge initially found the opinions of Drs. Dedhia and Graeber that the miner suffered from "respiratory insufficiency" prior to his death to be unreasoned and undocumented because neither doctor referred to any objective medical evidence to support his opinion.[21] Decision and Order at 15; Director's Exhibit 14. In contrast, the

[17] Dr. Bush, a Board-certified Anatomic and Clinical Pathologist and Medical Microbiologist, reviewed the miner's autopsy slides and select medical records. Dr. Bush diagnosed a "mild to moderate degree of simple silicosis," among other diagnoses, but opined that the miner's silicosis did not cause respiratory impairment or disability. Director's Exhibit 27 at 2-3.

[18] Dr. Tomashefski, a Board-certified pathologist and professor of pathology at Case Western Reserve University, also reviewed the miner's medical records and autopsy slides and similarly opined that the miner's "underlying cause" of death was metastatic renal cell carcinoma but that the "immediate cause of death" was "respiratory failure" due to pulmonary congestion and edema, right-sided pleural effusion, metastatic carcinoma, and multifocal organizing pneumonia. Director's Exhibit 32 at 4. Dr. Tomashefski further opined that the miner's silicosis was not severe enough to have caused a respiratory impairment. *Id*. at 4-5.

[19] Dr. Crouch, who is Board-certified in Anatomic Pathology and is an attending physician at Barnes-Jewish Hospital in St. Louis, reviewed the miner's autopsy slides and medical records. Dr. Crouch diagnosed metastatic renal cell carcinoma, nonspecific fibrosis, mixed pattern emphysema, multifocal organizing pneumonia, pleural fibrosis and foreign body granulomas consistent with pleurodesis, and silicosis. Director's Exhibit 14. Dr. Crouch identified "extensive fibrosis" but she attributed it to the effects of tumor, prior chemotherapy, and left pleurodesis, and she, therefore, concluded that "coal dust exposure could not have caused any clinically significant degree of respiratory impairment or disability." *Id*.

[20] The administrative law judge incorporated by reference Administrative Law Judge Richard A. Morgan's summary of the physicians' opinions and respective qualifications. Decision and Order at 14; *see* Judge Morgan's December 19, 2012 Decision and Order at 7-10.

[21] The administrative law judge also accorded diminished weight to the opinions of Drs. Dedhia and Graeber based on their relative qualifications noting that, while they "are likely qualified," the information concerning their qualifications was limited. Decision and Order at 14.

administrative law judge found that "[t]he best qualified physicians, i.e. [Drs.] Tuteur, Bush, Tomashefski, and Crouch all found the miner's silicosis was too limited and mild to have caused any lifetime impairment." Decision and Order at 15; Director's Exhibits 14, 27, 32, 40; Employer's Exhibit 1. Thus, the administrative law judge concluded that "[t]he medical opinion evidence as a whole, does not establish total disability." Decision and Order at 16.

As an initial matter, the administrative law judge's focus at 20 C.F.R. §718.204(b)(2)(iv) on whether the miner's silicosis contributed to or resulted in a disabling respiratory impairment was improper. Contrary to the administrative law judge's analysis, the proper inquiry at 20 C.F.R. §718.204(b)(2) is whether the evidence establishes that a totally disabling respiratory or pulmonary impairment is present, regardless of its cause. *See* 20 C.F.R. §§718.204(c), 718.305(b)(1)(iii), 718.305(d); *see also Roberts v. West Virginia C.W.P. Fund*, 74 F.3d 1233 (Table), 1996 WL 13850, at *2 (4th Cir. Jan. 12, 1996) (holding that the inquiry at total disability is the existence of respiratory impairment, not its etiology, and finding that where a miner died of respiratory insufficiency due to metastatic lung cancer "[t]here is no conceivable way to find that this miner did not have a totally disabling respiratory condition.").

Further, in rendering her finding that claimant failed to establish total disability, the administrative law judge failed to consider the miner's voluminous treatment records, which contain evidence relevant to the presence of a totally disabling respiratory or pulmonary impairment.[22] *See* Director's Exhibits 11, 16, 26. Because the administrative law judge erred in considering the etiology, rather than the existence, of the miner's impairment at 20 C.F.R. §718.204(b)(2), and further failed to weigh all of the evidence relevant to whether the miner was totally disabled, we must vacate her determination pursuant to 20 C.F.R. §718.204(b)(2)(iv). 20 C.F.R. §718.204(b)(2); *see Addison*, 831 F.3d at 252-53, 25 BLR at 2-788; *Hicks*, 138 F.3d at 535, 21 BLR at 2-340; *McCune*, 6 BLR at 1-998.

As we have vacated the administrative law judge's evaluation of the evidence relevant to total disability at 20 C.F.R. §718.204(b)(2)(ii) and (iv), we must also vacate her finding that claimant failed to establish total disability at 20 C.F.R. §718.204(b)(2), overall. Consequently, we further vacate the administrative law judge's findings that

[22] The miner's treatment records include a diagnosis of progressive metastatic renal cell carcinoma with mediastinal lymphadenopathy and endobronchial lesions in 2003, dependence on supplemental oxygen as of February 2005, desaturation and shortness of breath with walking in February 2005, and death due to respiratory failure in July 2006. Director's Exhibits 11, 16, 26.

claimant did not establish a basis for modification pursuant to 20 C.F.R. §725.310 or invoke the presumption at Section 411(c)(4), and remand this case for further consideration and weighing of all the evidence relevant to the issue of total disability. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc); *Fields*, 10 BLR at 1-20.

Part 718 Entitlement - Death Due to Pneumoconiosis

In the interest of judicial economy, we will address the administrative law judge's findings relevant to whether claimant could establish entitlement without the benefit of the Section 411(c)(4) presumption.

Where the Sections 411(c)(3) and 411(c)(4) presumptions do not apply, *see* 30 U.S.C. §921(c)(3), (4), claimant must affirmatively establish that pneumoconiosis was the cause or a substantially contributing cause of the miner's death. *See* 20 C.F.R. §§718.1, 718.205(b)(1),(2). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(b)(6); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000), *citing Shuff v. Cedar Coal Co.*, 967 F.2d 977, 979-80, 16 BLR 2-90, 2-93 (4th Cir. 1992).

The administrative law judge found that the miner had pneumoconiosis in the form of silicosis based upon the unanimous opinions of Drs. Gyure,[23] Crouch, Bush, Tomashefski, and Tuteur. Decision and Order at 16 n.26; Director's Exhibits 13, 14, 27, 32, 40; Employer's Exhibit 1. In considering whether the miner's death was due to pneumoconiosis, the administrative law judge correctly noted that only Drs. Dedhia and Graeber opined that pneumoconiosis played any role in the miner's death. Specifically, Dr. Dedhia opined that the miner's pneumoconiosis "did not help him and may have hastened his demise." Director's Exhibit 14. Dr. Graeber opined that the miner's "life was shortened by the presence of occupational lung disease" because the miner's underlying pneumoconiosis limited the surgical options available for treatment of his renal cell carcinoma. *Id.*

The administrative law judge initially noted that both Drs. Dedhia and Graeber treated the miner, and thus considered their opinions pursuant to 20 C.F.R. §718.104. The administrative law judge found, however, that Dr. Dedhia's opinion that pneumoconiosis "may" have hastened the miner's death, was equivocal. Decision and Order at 18. The administrative law judge further found that the opinions of both Drs.

[23] Dr. Gyure, the autopsy prosector, diagnosed anthrasilicotic nodules in a July 25, 2006 autopsy report. Director's Exhibit 13.

Dedhia and Graeber were "conclusory" as "neither doctor . . . provides any evidence or support for their respective opinions." *Id.* The administrative law judge, therefore, permissibly determined that although Drs. Dedhia and Graeber "could possibly have a more thorough understanding of [the miner's] condition" because they treated the miner, their opinions regarding the cause of the miner's death were not sufficiently reasoned, and were, therefore, entitled to little weight.[24] *See* 20 C.F.R. §718.104(d)(5); *Sparks*, 213 F.3d at 192, 22 BLR at 2-263; *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision and Order at 18.

The administrative law judge has the discretion as the trier-of-fact to render credibility determinations, and the Board is not empowered to reweigh the evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because substantial evidence supports the administrative law judge's credibility determinations, we affirm her finding that the opinions of Drs. Dedhia and Graeber are insufficiently reasoned to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(b). *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000); *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-22.

Because claimant has failed to establish that the miner's death was due to pneumoconiosis, we affirm the administrative law judge's determination that claimant failed to affirmatively establish her entitlement to benefits pursuant to 20 C.F.R. §718.205(b).

Remand Instructions

On remand, following her reconsideration of the blood gas studies and medical opinions, the administrative law judge should reconsider all of the evidence relevant to the issue of total disability, pursuant to 20 C.F.R. §718.204(b)(2), and explain her findings in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165; *Fields*, 10 BLR at 1-20; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc).

If the administrative law judge finds that the evidence establishes total disability pursuant to 20 C.F.R. §718.204(b), claimant will have invoked the Section 411(c)(4)

[24] The relationship between a miner and his treating physician may constitute substantial evidence in support of the adjudicator's decision to give that physician's opinion controlling weight, *provided* that the weight given to the opinion shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence, and the record as a whole. 20 C.F.R. §718.104(d)(5) (emphasis added).

presumption that the miner's death was due to pneumoconiosis, and established a basis for modification under 20 C.F.R. §725.310. 20 C.F.R. §718.305(b)(1), (c)(2). In that case, the administrative law judge must then consider whether employer rebutted the presumption by establishing that the miner had neither legal nor clinical pneumoconiosis,[25] or by establishing that "no part of the miner's death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2) (i), (ii).

If, however, the administrative law judge finds that the evidence does not establish that the miner was totally disabled, she may reinstate the denial of benefits because, without the benefit of the Section 411(c)(4) presumption, claimant did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b), an essential element of entitlement.

[25] As previously indicated, the administrative law judge found that claimant established the existence of pneumoconiosis in the form of silicosis. Decision and Order at 16 n.26. When considering rebuttal under the first prong, the administrative law judge must put the burden on employer to affirmatively disprove the existence of legal and clinical pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015).

Accordingly, the administrative law judge's Decision and Order Denying Modification and Benefits is affirmed in part and vacated in part, and this case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge