U.S. Department of Labor

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

BRB Nos. 15-0072 BLA
and 15-0075 BLA

DOLLY GIBBONS (Widow of and o/b/o ULES GIBBONS) Claimant-Respondent v. CYPRUS CUMBERLAND MOUNTAIN CORPORATION, c/o WELLS FARGO DISABILITY MANAGEMENT and SEABOARD SURETY COMPANY, c/o ST. PAUL TRAVELERS Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 12/16/2015 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits in a Subsequent Claim and the Decision and Order Awarding Survivor's Benefits of Peter B. Silvain, Jr., Administrative Law Judge, United States Department of Labor.

Carl M. Brasher (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer.

MacKenzie Fillow (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: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits in a Subsequent Claim[1] (2011-BLA-05267) and the Decision and Order Awarding Survivor's Benefits (2011-BLA-05268) of Administrative Law Judge Peter B. Silvain, Jr., rendered on a miner's subsequent claim and a survivor's claim filed pursuant to provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[2] Based on the

[1] The miner's first claim for benefits, filed on January 20, 1988, was denied by the district director on June 7, 1988, because the miner did not establish any of the elements of entitlement. Director's Exhibit 1. The miner filed his second claim on August 18, 1997, which the district director denied on December 9, 1997, because the miner did not establish any of the elements of entitlement. Director's Exhibit 2. The miner's third claim, filed on February 3, 1998, was treated as a request for modification. *Id.* In a Decision and Order issued on May 31, 2000, Administrative Law Judge Robert L. Hillyard denied modification upon finding that the miner failed to establish a change in conditions or a mistake in a determination of fact. *Id.* The miner filed his fourth claim on September 18, 2002, which the district director deemed abandoned on December 22, 2003. Director's Exhibit 3. On August 24, 2005, the miner filed his fifth claim, which the district director denied on May 17, 2006, because, although the miner established the existence of pneumoconiosis arising out of coal mine employment, he did not establish total disability or total disability due to pneumoconiosis. Director's Exhibit 4. The miner filed his current subsequent claim on June 30, 2008. Director's Exhibit 6. It was pending when he died on October 23, 2009. Director's Exhibit 48.

[2] Claimant, the widow of the miner, filed her claim for survivor's benefits on November 19, 2009, and is continuing to pursue the miner's claim on her husband's behalf. Director's Exhibits 58, 69. The district director consolidated the two claims for the purpose of decision only and they were sent to the administrative law judge for hearing. The administrative law judge conducted a hearing in the miner's claim on February 27, 2012. He subsequently issued separate decisions in the miner's claim and in the survivor's claim. Based on the administrative law judge's statement in his Decision

parties' stipulation, and the evidence of record, the administrative law judge credited the miner with nineteen years of coal mine employment, and found that the miner spent those years at a surface mine in dust conditions substantially similar to dust conditions in an underground mine. The administrative law judge also found that the new evidence submitted in the miner's subsequent claim was sufficient to establish total disability, thereby establishing a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.

The administrative law judge further determined that the miner was entitled to the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[3] The administrative law judge found that employer failed to establish rebuttal of the presumption and awarded benefits in the miner's subsequent claim accordingly. Because the administrative law judge found that the miner was entitled to benefits at the time of his death, he found that claimant was automatically entitled to survivor's benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), without having to establish that the miner's death was due to pneumoconiosis.[4]

On appeal, employer challenges the administrative law judge's finding in the miner's claim that claimant established at least fifteen years of surface coal mine employment in dust conditions substantially similar to those in an underground mine. Employer also challenges the administrative law judge's determination that employer

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and Order in the survivor's claim, it appears that he did not conduct a hearing in the survivor's claim because the only issue before him was whether claimant was automatically entitled to benefits pursuant to Section 932(*l*) of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). Decision and Order Awarding Survivor's Benefits at 2.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(b).

[4] Section 932(*l*) of the Act provides that the survivor of a miner who was eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*), as implemented by 20 C.F.R. §718.305.

failed to rebut the presumption. Further, employer contends that the award of benefits in the survivor's claim cannot be affirmed, asserting that the automatic entitlement provision set forth in Section 932(*l*) of the Act is inapplicable. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), has filed a response, urging the Board to reject employer's argument that the administrative law judge erred in finding that the miner's surface coal mine employment was qualifying employment for purposes of the Section 411(c)(4) presumption. The Director further contends that there is no merit to employer's arguments regarding the administrative law judge's credibility determinations on rebuttal, and his award of benefits in the survivor's claim pursuant to the automatic entitlement provision set forth in Section 932(*l*).[5]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

I. The Miner's Claim

A. Invocation of the Section 411(c)(4) Presumption – Qualifying Coal Mine Employment

Employer argues that the administrative law judge erred in finding claimant established that the miner had at least fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. Employer asserts that claimant failed to prove that, during the miner's years as a surface miner, he was exposed to dust conditions substantially similar to those existing underground. Employer's allegations of error are without merit.

[5] We affirm, as unchallenged on appeal, the administrative law judge's determination that total disability was established in the miner's claim pursuant to 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[6] The record reflects that the miner's coal mine employment was in Kentucky. Director's Exhibit 7. Accordingly, 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 (1989) (en banc).

The Department of Labor (DOL) promulgated regulations implementing Section 411(c)(4), which provide that "[t]he conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there."[7] 20 C.F.R. §718.305(b)(2); *see Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479, 22 BLR 2-265, 2-275 (7th Cir. 2001); *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988). Although the miner bears the burden of establishing comparability between dust conditions in underground and surface mine employment, he is not required to first establish the dust conditions in an underground mine, but "must only establish that [the miner] was exposed to sufficient coal dust in his surface mine employment." *Leachman*, 855 F.2d at 512-13; *see Blakley v. Amax Coal Co.*, 54 F.3d 1313, 1319, 19 BLR 2-192, 2-202 (7th Cir. 1995). It is then the function of the administrative law judge, based on his expertise and knowledge of the industry, "to compare the surface mining conditions established by the evidence to conditions known to prevail in underground mines." *Leachman*, 855 F.2d at 512-13.

In this case, the administrative law judge observed that the miner's entire nineteen year tenure with employer was at a surface mine, where he worked primarily as a foreman and a dozer operator. The administrative law judge summarized the relevant testimony at the hearing in the miner's subsequent claim as follows:

> Claimant described having to repeatedly clean everything that was involved in the Miner's work: his clothes, his lunch bucket, his face and hands, and

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[7] The comments accompanying the Department of Labor's regulations further clarify the burden to establish substantial similarity:

> [T]he claimant need only focus on developing evidence addressing the dust conditions prevailing at the non-underground mine or mines at which the miner worked. The objective of this evidence is to show that the miner's duties regularly exposed him to coal mine dust, and thus that the miner's work conditions approximated those at an underground mine. The term "regularly" has been added to clarify that a demonstration of sporadic or incidental exposure is not sufficient to meet the claimant's burden. The fact-finder simply evaluates the evidence presented, and determines whether it credibly establishes that the miner's non-underground mine working conditions regularly exposed him to coal mine dust. If that fact is established to the fact-finder's satisfaction, the claimant has met his burden of showing substantial similarity.

78 Fed. Reg. 59,102, 59,105 (Sept. 25, 2013).

> his truck, as they were all "very dirty, dusty, [and] black." The Miner's daughter described visiting the Miner at his job site and seeing everything "absolutely covered" in coal dust, because "…[i]t was just nothing it didn't touch."

(Miner's Claim (MC)) Decision and Order Awarding Benefits in a Subsequent Claim at 4, 23 (internal citations omitted), *quoting* Hearing Transcript at 16, 22. Employer has offered no evidence in this case to dispute the testimony of claimant and the miner's daughter with regard to the miner's employment. In addition, contrary to employer's contention, it was not necessary for the witnesses to have familiarity with underground coal mine work in order to demonstrate that the miner was regularly exposed to coal mine dust. *See Leachman*, 855 F.2d at 512-13; *Blakley*, 54 F.3d at 1319, 19 BLR at 2-202. Accordingly, the administrative law judge acted within his discretion in crediting the testimony of claimant and the miner's daughter and relying on this evidence to find that the miner was regularly exposed to coal mine dust in his surface mining jobs. 20 C.F.R. §718.305(b)(2); *see Leachman*, 855 F.2d at 512-13; *see also Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479, 22 BLR 2-265, 2-275 (7th Cir. 2001) (a miner's unrebutted testimony can support a finding of substantial similarity). Because it is rational and based upon substantial evidence, we affirm the administrative law judge's finding that claimant established that the miner had at least fifteen years of employment in surface mining in dust conditions substantially similar to those found in underground mines. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011).

In light of our affirmance of the administrative law judge's findings that claimant established that the miner had at least fifteen years of qualifying coal mine employment and a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's determination that the miner was entitled to the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) in the miner's claim.

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

In order to rebut the Section 411(c)(4) presumption, employer must establish that the miner did not suffer from either legal[8] or clinical[9] pneumoconiosis, or that "no part of

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

[9] Pursuant to 20 C.F.R. §718.201(a)(1), clinical pneumoconiosis "consists of those

the miner's respiratory or pulmonary disability was caused by pneumoconiosis as defined in 20 C.F.R. §718.201." 20 C.F.R. §718.305(d)(1); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1071, 25 BLR 2-431, 2-446-47 (6th Cir. 2013); *see also Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995).

1. The Existence of Legal Pneumoconiosis

With respect to the presumed existence of legal pneumoconiosis, the administrative law judge determined that employer's experts, Drs. Dahhan and Forehand, did not credibly explain their reasons for excluding coal dust exposure as a contributing cause of the miner's disabling chronic obstructive pulmonary disease (COPD). MC Decision and Order at 15-18, 31-32. Based on this finding, the administrative law judge concluded that employer did not sustain its burden of disproving the existence of legal pneumoconiosis. *Id*. at 32. Employer contends that the administrative law judge did not address all aspects of the opinions of Drs. Dahhan and Forehand, and erred in finding that they did not provide adequate explanations for their conclusion that coal dust exposure did not contribute to the miner's disabling COPD.

Contrary to employer's initial argument, a review of the Decision and Order reveals that the administrative law judge provided a comprehensive discussion of both Dr. Dahhan's opinion, contained in a narrative report dated April 22, 2009 and in deposition testimony dated September 17, 2009, and Dr. Forehand's opinion, contained in a narrative report dated November 15, 2007. MC Decision and Order at 13-15, 20-21, 31-32; Director's Exhibit 52; Employer's Exhibits 6, 7. In so doing, the administrative law judge fully delineated the physicians' findings, and the underlying bases for their conclusions that smoking was the sole cause of the miner's disabling impairment, and provided valid rationales for discrediting them.

With respect to Dr. Dahhan's opinion, the administrative law judge noted that he examined the miner on April 22, 2009, and diagnosed a totally disabling obstructive ventilatory defect due solely to smoking. MC Decision and Order at 31; Employer's Exhibit 6 at 2. The administrative law judge acknowledged Dr. Dahhan's observations that: "a smoker is reported to lose up to 90 cc of his FEV1 per year of smoking[,] which is an amount sufficient to be injurious to the respiratory system and cause the development of such pulmonary disability;" the miner "lost over 1500cc of his FEV1[,] which is an amount that cannot be accounted for by the obstructive impact of coal dust on

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diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment."

the respiratory system that is estimated by Dr. Attfield and [his] associate to be 5-9cc loss in FEV1 per year of coal dust exposure; and the loss of FEV1 due to coal dust exposure was a "trivial amount" in the miner's case, considering the overall loss of FEV1. MC Decision and Order at 31, *quoting* Employer's Exhibit 6 at 2.

The administrative law judge correctly found that, contrary to employer's argument, claimant need not show that all of the loss in the miner's FEV1, described by Dr. Dahhan, was caused by coal mine dust exposure. *See* 65 Fed. Reg. 79,939-41 (Dec. 20, 2000); MC Decision and Order at 20. The administrative law judge also acted within his discretion in finding that Dr. Dahhan's statement about the relative effects of smoking and coal dust on the miner's FEV1 "implies that coal dust never or rarely causes disabling obstructive lung disease, an assumption that is contrary to the Department's finding [as expressed in the preamble to the 2001 regulations] that "nonsmoking miners develop moderate and severe obstruction at the same rate as smoking miners." MC Decision and Order at 20, *citing* 65 Fed. Reg. 79,938 (Dec. 20, 2000); *see A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11 (6th Cir. 2012). In addition, the administrative law judge rationally determined that Dr. Dahhan's reliance on statistics regarding the loss in FEV1 typically caused by coal dust exposure is insufficient to exclude it as a causal factor in the miner's respiratory impairment because his opinion was "based on generalities, rather than specifically focusing on the miner's condition." MC Decision and Order at 20; *see Central Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491, 25 BLR 2-633, 2-645 (6th Cir. 2014); *Adams*, 694 F.3d at 801-02, 25 BLR at 2-210-11. Moreover, the administrative law judge permissibly found that Dr. Dahhan's failure to explain "why, even if it was a 'trivial' loss of FEV1, the miner's significant history of coal dust exposure played no role in his disabling respiratory impairment," diminished the credibility of his opinion.[10] MC Decision and

[10] Dr. Dahhan also excluded coal dust exposure as a cause of the miner's disabling COPD because the miner was treated with multiple bronchodilators, which are "not consistent with coal dust induced obstructive lung disease that would not be responsive to bronchodilator agents." Director's Exhibit 52; *see* (Miner's Claim (MC)) Decision and Order Awarding Benefits in a Subsequent Claim at 14. The administrative law judge noted that the fact that "the Miner may experience some relief from bronchodilators does not address the etiology of the fixed portion of the Miner's impairment that does not benefit from bronchodilator treatment." MC Decision and Order at 20. As such, the administrative law judge acted within his discretion in discounting Dr. Dahhan's opinion because he did not adequately explain why the use of bronchodilators eliminated coal mine dust exposure as a cause of the miner's impairment. *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Consolidation Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(en banc).

Order at 20; *see Tenn. 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 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983).

With respect to Dr. Forehand's opinion, the administrative law judge noted that he examined the miner on November 15, 2007, and diagnosed "cigarette smoker's lung disease," based on the miner's report of shortness of breath, a pulmonary function study showing an obstructive impairment, a normal blood gas study, and a forty-nine pack year smoking history. MC Decision and Order at 31, *quoting* Employer's Exhibit 7. The administrative law judge also referenced Dr. Forehand's statement that "cigarette smoker's lung disease is the sole factor contributing to respiratory impairment." *Id.* The administrative law judge permissibly determined that Dr. Forehand's opinion is "inherently defective" because he "did not offer any credible explanation as to why he excluded coal dust as a contributing factor to the [m]iner's obstructive lung disease . . . ."[11] MC Decision and Order at 31; *see Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007).

Based on the foregoing, the administrative law judge acted within his discretion in finding that the opinions of Drs. Dahhan and Forehand do not satisfy employer's burden to rebut the presumed existence of legal pneumoconiosis.[12] *See Adams*, 694 F.3d at 801-

[11] Employer correctly observes that the administrative law judge referred to Dr. Forehand's alleged reliance on an inflated coal mine employment history in giving his opinion diminished weight, and argues that the administrative law judge's reasoning is suspect. *See* MC Decision and Order at 15. As indicated *supra*, the administrative law judge credited the miner with nineteen years of coal mine employment, while Dr. Forehand recorded a thirty-five year history of such employment. MC Decision and Order at 3; Employer's Exhibit 7. We need not address employer's contention, however, as the administrative law judge provided a valid alternative rationale for discrediting Dr. Forehand's opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

[12] We decline to address employer's allegation that the administrative law judge erred in crediting Dr. Baker's diagnosis of legal pneumoconiosis. Because it is employer's burden to affirmatively prove that the miner did not have legal pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(i)(A), error, if any, in the administrative law judge's weighing of Dr. Baker's opinion is harmless. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53, 1-55 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1277 (1984); 30 U.S.C. §902(b).

02, 25 BLR at 2-210-11; *Barrett*, 478 F.3d at 356, 23 BLR at 2-483. Accordingly, we affirm the administrative law judge's determination that employer failed to establish rebuttal under 20 C.F.R. §718.305(d)(1)(i)(A).[13]

2. Total Disability Causation

Employer does not raise any distinct arguments regarding the administrative law judge's finding that it also failed to prove that no part of the miner's total pulmonary disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(ii). As the administrative law judge observed, "[t]he issue of whether the Miner's disability is related to pneumoconiosis is essentially the same as the issue of whether he suffers from legal pneumoconiosis, with the expert opinions on one issue also addressing the other." MC Decision and Order at 32. Thus, to the extent that employer's allegations of error relate to the issue of total disability causation, they are rejected, and we affirm the administrative law judge's finding that, because Drs. Dahhan and Forehand did not provide reasoned and documented opinions on the source of the miner's disabling COPD, their opinions were insufficient to establish that no part of the miner's total disability was due to pneumoconiosis as defined in 20 C.F.R. §718.201. 20 C.F.R. §718.305(d)(1)(ii); MC Decision and Order at 19; *see Ogle*, 737 F.3d at 1071, 25 BLR at 2-446-47. Because we have affirmed the administrative law judge's determination that employer did not rebut the Section 411(c)(4) presumption that the miner is totally disabled due to pneumoconiosis, we further affirm the administrative law judge's award of benefits in the miner's claim.

II. The Survivor's Claim

Employer asserts that the administrative law judge erred in applying Section 932(*l*) to determine that claimant is automatically entitled to receive benefits as a consequence of the award of benefits in the miner's claim. Employer maintains that the prerequisites for the application of Section 932(*l*) were not met, as the miner was not awarded benefits during his lifetime. Employer argues that because employer's appeal of the award of benefits to the miner is pending before the Board, automatic survivor's benefits should not be awarded, as there was no final decision finding the miner eligible for benefits during his lifetime. Contrary to employer's contention, the Board held in

[13] We need not reach employer's arguments challenging the administrative law judge's finding that it failed to disprove the existence of clinical pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i)(B), as employer must rebut the existence of both clinical *and* legal pneumoconiosis to satisfy the first prong of rebuttal under amended Section 411(c)(4). 20 C.F.R. §718.305(d)(1)(i); *see Larioni*, 6 BLR at 1-1277.

Rothwell v. Heritage Coal Co., 25 BLR 1-141 (2014), that Section 932(*l*) provides automatic entitlement to survivor's benefits to eligible survivors of miners who are determined to be eligible for benefits, including miners whose determinations of eligibility are not yet final, and are subject to potential appeal and reversal. *Rothwell*, 25 BLR at 1-146-47. Therefore, for the reasons set forth in *Rothwell*, we reject employer's argument that Section 932(*l*) is not applicable because the award of benefits in the miner's claim has not become final. *Id*.

The administrative law judge correctly determined that claimant met the prerequisites for application of Section 932(*l*), as she: filed her survivor's claim after January 1, 2005; she is an eligible survivor of the miner; her claim was pending after March 23, 2010; and the miner was determined to be eligible to receive benefits at the time of his death. Decision and Order Awarding Survivor's Benefits at 3-4. Thus, we affirm the administrative law judge's award of benefits in the survivor's claim.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits in a Subsequent Claim and his Decision and Order Awarding Survivor's Benefits are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge