U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 17-0194 BLA

DIANA G. DIX (Widow of JAMES E. DIX) Claimant-Respondent v. SEWELL COAL COMPANY/PITTSON COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 02/05/2018 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith, Charleston, West Virginia, for claimant.

Andrea L. Berg and Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2015-BLA-05041) of Administrative Law Judge Adele Higgins Odegard, rendered 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 a survivor's claim filed on October 11, 2013.

The administrative law judge credited the miner with twenty-two years of underground coal mine employment and found that claimant[1] established that the miner had a totally disabling pulmonary or respiratory impairment at the time of his death pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge therefore found that claimant invoked the presumption that the miner's death was due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] The administrative law judge also found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.[3]

On appeal, employer argues that the administrative law judge erred in finding that claimant established that the miner had a totally disabling respiratory or pulmonary impairment at the time of his death and, therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer also argues that the administrative law judge erred in finding that employer did not rebut the Section 411(c)(4) presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers'

[1] Claimant is the widow of the miner, who died on August 12, 2013. Director's Exhibit 10. The miner did not file a claim for benefits. Therefore, Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which 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 survivor's benefits, is not applicable in this case. 30 U.S.C. §932(*l*) (2012).

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's death was due to pneumoconiosis in cases where a claimant establishes that the miner had 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 or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[3] The administrative law judge further found that claimant did not establish the existence of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304. Decision and Order at 5-12. Thus, the administrative law judge found that claimant did not invoke the irrebuttable presumption of death due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). Decision and Order at 12.

Compensation Programs, did not file a response brief in this appeal. Employer filed a reply brief, reiterating its prior contentions.[4]

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).

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

The regulations provide that a miner is considered totally disabled if his respiratory or pulmonary impairment, standing alone, prevents or prevented him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a miner's disability is established by: 1) pulmonary function studies showing values equal to or less than those listed in Appendix B to 20 C.F.R Part 718; 2) arterial blood gas studies showing values equal to or less than those listed in Appendix C to 20 C.F.R. Part 718; 3) medical evidence showing that the miner has pneumoconiosis and cor pulmonale with right-sided congestive heart failure; or 4) the opinion of a physician who, exercising reasoned medical judgment, concludes that a miner's respiratory or pulmonary condition is totally disabling, based on medically acceptable clinical and laboratory diagnostic techniques. 20 C.F.R. §718.204(b)(2)(i)-(iv).

The administrative law judge found that the pulmonary function studies and arterial blood gas studies of record, dating from 1983, 1984 and 1986, are "so remote in time that they could not possibly constitute reliable evidence regarding the [m]iner's pulmonary condition at the time of his death." *See* 20 C.F.R. §718.204(b)(2)(i), (ii); Decision and Order at 13-14; Employer's Exhibits 1-3. Further, because the record contains no evidence of cor pulmonale with right-sided congestive heart failure the administrative law judge found that total respiratory disability could not be demonstrated under 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 14.

[4] We affirm, as unchallenged on appeal, the administrative law judge's finding that the miner had twenty-two years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[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.

Considering whether the medical opinion evidence established that the miner had a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the opinions of Drs. Anderson,[6] Castle,[7] Swedarsky[8] and Oesterling,[9] the miner's hospitalization records from

[6] In a note dated March 25, 2014, Dr. Anderson stated that she treated the miner for significant lung disease, chronic obstructive pulmonary disease (COPD) and pulmonary fibrosis, and reviewed an autopsy report by Dr. Sawyer that diagnosed pneumoconiosis. Director's Exhibit 13. Noting that the miner "had a lot of wheezing" and required oxygen, Dr. Anderson opined that the miner had "a lot of respiratory issues." *Id*.

[7] Dr. Castle reviewed the miner's medical records, including the death certificate, and stated that while it was possible the miner had some respiratory impairment, it was not possible for him to accurately determine whether the miner had a disabling respiratory impairment during his life. Employer's Exhibit 8. Dr. Castle also observed that the miner had numerous hospitalizations between 2008 and his death in 2013 for pneumonia, fractures, coronary artery disease with cardiomyopathy, and a left lung pulmonary embolus. *Id*. Referring to this evidence, Dr. Castle opined that the miner was totally disabled "near the end of his death" because of multiple medical problems, including recurrent aspiration pneumonia, pulmonary embolus, chronic congestive heart failure with a cardiomyopathy, severe osteoporosis with multiple skeletal fractures, dementia, diabetes, peripheral vascular disease, and rheumatoid arthritis. *Id*.

[8] Dr. Swedarsky reviewed the miner's medical records, the death certificate, and the autopsy report and slides. Employer's Exhibit 6. Dr. Swedarsky opined that pulmonary function studies from 1983 and 1986 do not support a finding of significant respiratory impairment, but the records from 2001 document respiratory impairment. *Id*. In particular, Dr. Swedarsky stated that the miner's respiratory function was negatively affected by rheumatoid arthritis, osteoporosis with compression and rib fractures and exaggerated kyphosis, and repeated episodes of aspiration pneumonia. *Id*. Dr. Swedarsky further stated that the miner became increasingly debilitated as a consequence of rheumatoid arthritis, osteoporosis, spinal compression and rib fractures and exaggerated kyphosis, diabetes, dementia, poor nutrition, anemia of chronic disease, repeat episodes of aspiration pneumonia, cardiovascular disease and pulmonary embolus. Employer's Exhibit 6.

[9] Dr. Oesterling reviewed the autopsy slides and concluded that diffuse pneumonia affected "nearly 80% of [the miner's] lung." Director's Exhibit 23. Dr. Oesterling found evidence of "abundant aspirated fibers" in four out of five lobes and a mild diffuse bronchopneumonia in the fifth lobe, resulting in "all five lobes . . . involved with a

Greenbrier Valley Medical Center (GVMC),[10] some of which were completed by Dr. Anderson, the miner's death certificate,[11] also completed by Dr. Anderson, and the autopsy report from Dr. Sawyer.[12] The administrative law judge found that Drs. Anderson, Oesterling, and Sawyer did not address whether the miner was totally

---

pneumonic process," which "eliminated lung function throughout 80% of this [miner's] lung." Director's Exhibit 23.

[10] The hospitalization records from Greenbrier Valley Medical Center (GVMC) reflect: diagnosis of pneumonia on March 6, 2011; impressions of bilateral pneumonia, acute respiratory failure and chronic respiratory failure on March 9, 2011; listings of bilateral pneumonia, acute respiratory failure and chronic respiratory failure on March 10, 2011; listings of abdominal pain and recent history of rib fractures, and diagnoses of compression fractures of thoracic spine and pneumonia on March 20, 2012; diagnosis of bilateral pneumonia on July 24, 2013; note that bronchoscopy procedure showed chronic bronchitis changes on July 30, 2013; note of recurrent aspiration pneumonia on July 31, 2013; note that swallowing test showed mild oral phase and moderate pharyngeal phase dysphagia, with aspiration of larynx below vocal cords on August 1, 2013; impressions of pneumonia and acute chronic respiratory failure, and note of hypoxic respiratory failure on August 2, 2013; diagnoses of acute respiratory failure, aspiration pneumonia, exacerbation of chronic obstructive pulmonary disease (COPD), coal workers' pneumoconiosis, pulmonary embolism and rheumatoid arthritis on August 6, 2013; note that the miner was "pretty much unresponsive" when readmitted to the hospital on August 9, 2013; and death summary diagnoses of end-stage cardiomyopathy, COPD, coal workers' pneumoconiosis, history of pulmonary embolism, rheumatoid arthritis, sub-therapeutic INR, and acute respiratory failure secondary to end-stage cardiomyopathy and COPD. Employer's Exhibit 4.

[11] On the miner's death certificate, Dr. Anderson listed respiratory failure due to congestive heart failure as the immediate cause of the miner's death. Director's Exhibit 10.

[12] Dr. Sawyer performed the miner's autopsy. In her August 12, 2013 report, she diagnosed complicated coal workers' pneumoconiosis, bilateral acute pneumonia, and left-sided pulmonary embolism. Director's Exhibit 12.

disabled.[13] The administrative law judge then summarized the remaining evidence as follows:

> The opinions of Drs. Swedarsky and Castle indicate that the [m]iner had severe respiratory impairments at the end of his life and that, during his final hospitalization, the [m]iner was in respiratory failure. Dr. Castle stated that the [m]iner was permanently and totally disabled at the end of his life, due in part to respiratory conditions such as recurrent aspiration pneumonia and pulmonary embolus. . . . Their opinions reflect a good understanding of the [m]iner's physical state at the end of his life. And, I note, their opinions are consistent with the conclusions that Dr. Anderson and the other physicians at GVMC rendered during the [m]iner's last hospitalization, regarding the [m]iner's respiratory failure. I therefore give their opinions significant weight.

Decision and Order at 17-18. The administrative law judge further stated:

> Though neither [Dr. Swedarsky nor Dr. Castle] specifically addressed whether the [m]iner could perform coal mine employment at the end of his life, I find that their conclusions that the [m]iner had respiratory failure indicate that the [m]iner could not perform any work whatsoever, and thus their opinions satisfy the requirements of [20 C.F.R.] § 718.204(b)(1)(ii).

Decision and Order at 18 n.26.

Thus, the administrative law judge found that "[c]laimant has established, by a preponderance of the evidence, based on physicians' opinions, that the [m]iner was totally disabled, from a pulmonary perspective." *Id.* The administrative law judge

[13] Specifically, the administrative law judge found that Dr. Anderson's March 25, 2014 statement did not indicate whether the miner was totally disabled. Decision and Order at 18; Director's Exhibit 13. The administrative law judge found that Dr. Oesterling also "did not specifically opine on the issue of the [m]iner's disability." Decision and Order at 18; Director's Exhibit 23. She further found, however, that Dr. Oesterling's notation that pneumonia eliminated lung function throughout 80% of the miner's lungs was consistent with, and did not contradict, the other physicians' conclusions regarding total disability. *Id.* The administrative law judge correctly noted that Dr. Sawyer did not render an opinion as to whether the miner had a totally disabling respiratory impairment at the time of his death. Decision and Order at 14 n.21; Director's Exhibit 12.

therefore found that claimant invoked the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis. *Id.*

Employer argues that the administrative law judge erred in finding total disability established by the opinions of Drs. Swedarsky and Castle. Employer's Brief at 8-12. Employer contends that the administrative law judge's finding of total disability should be reversed because there is no credible evidence to support her conclusion. Employer's Brief at 12. Although employer accurately notes that none of the physicians explicitly opined that the miner was totally disabled from a pulmonary standpoint, a physician need not phrase his or her opinion in terms of "total disability" in order to support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894, 13 BLR 2-348, 2-356 (7th Cir. 1990), *citing Black Diamond Coal Co. v. Benefits Review Board* [*Raines*], 758 F.2d 1532, 1534 (11th Cir. 1985) ("[i]t is not essential for a physician to state specifically that an individual is totally impaired . . . ."); Employer's Brief at 8. Diagnoses, statements and notes set forth in treatment records or other documents regarding limits on a miner's activities due to a pulmonary condition may be relevant to a total disability determination even if the records do not use the phrase "totally disabled" or specifically address the miner's ability to perform his prior coal mine job. A medical opinion may support a finding of total disability if it provides sufficient information from which the administrative law judge can reasonably infer that a miner is or was unable to do his last coal mine job. *See Poole*, 897 F.2d at 894, 13 BLR at 2-356; *Scott v. Mason Coal Co*., 60 F.3d 1138, 1142, 19 BLR 2-257, 2-263 (4th Cir. 1995); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988).

Here, the record contains evidence that is relevant to the issue of total disability. The administrative law judge's analysis of this evidence is, however, insufficient. Specifically, the administrative law judge failed to explain her determination that Drs. Swedarsky and Castle "conclu[ded] that the miner had respiratory failure." Decision and Order at 18 n.26. While the hospitalization records summarized by both physicians document periods of respiratory failure, including the period preceding his death, contrary to the administrative law judge's finding, neither physician concluded that the miner had respiratory failure. Employer's Brief at 10; Employer's Exhibits 6, 8. Rather, even after reviewing the miner's hospitalization records, Dr. Castle explicitly stated that "it is not possible to determine whether or not he had respiratory disability during life . . . ." Employer's Exhibit 8. Further, while Dr. Castle added that it was "clear that [the miner] was permanently totally disabled near the end of his death because of multiple [respiratory and non-respiratory] medical problems," as employer correctly asserts, Dr. Castle did not state that the miner's pulmonary or respiratory impairments, standing alone, were totally disabling. 20 C.F.R. §718.204(b)(1); Employer's Brief at 9; Employer's Exhibit 8.

Moreover, the administrative law judge failed to reconcile her finding that Dr. Castle's opinion supports a finding of total respiratory disability with her earlier acknowledgment that "Dr. Castle did not discuss how, if at all, [the miner's] chronic health conditions affected the [m]iner's respiratory system." Decision and Order at 15. Thus, the administrative law judge has failed to adequately explain her findings, as required by 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); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000); *Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985). We must therefore vacate the administrative law judge's finding that the evidence established that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2), and remand the case for further consideration. On remand, the administrative law judge should reconsider the opinions of Drs. Swedarsky and Castle, together with all of the evidence relevant to total disability, and explain her findings.[14]

As we have vacated the administrative law judge's finding that claimant established total respiratory disability, we must also vacate the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4). Because claimant established that the miner had twenty-two years of underground coal mine employment, if the administrative law judge determines, on remand, that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2), claimant will have invoked the Section 411(c)(4) presumption.

[14] We reject, however, employer's assertion that assessments of the miner's condition during his terminal illness cannot establish total disability because evidence of a *chronic* disabling respiratory or pulmonary impairment is required to prove total disability by medical opinion under 20 C.F.R. §718.204(b)(2). Employer's Brief at 11-12. In *Tanner*, the Board rejected that argument, holding that, "Under the plain language of Section 411(c)(4) of the Act and the implementing regulation . . . claimant is not required to establish that his totally disabling respiratory or pulmonary impairment is chronic." *Tanner v. Freeman United Coal Co.*, 10 BLR 1-85, 1-86 (1987). Moreover, the medical evidence in this case does not support employer's assertion that the miner's respiratory failure was simply acute, and occurred only during his terminal illness. The miner's hospitalization records from March 2011, two years prior to his death, document both acute and chronic respiratory failure, and the records from August 2, 2013, near the time of his death, document "acute on chronic respiratory failure." Employer's Exhibit 4.

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

In the interest of judicial economy, and to avoid the repetition of any error on remand, we will also address employer's contentions concerning the administrative law judge's finding that employer did not rebut the presumption under 20 C.F.R. §718.305(d)(2). Once the administrative law judge determines that claimant has invoked the presumption that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.305(b), the burden of proof shifts to employer to rebut the presumption by establishing that the miner had neither clinical nor legal pneumoconiosis,[15] 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).

Upon finding that employer was unable to disprove the existence of clinical and legal pneumoconiosis at 20 C.F.R. §718.305(d)(2)(i),[16] the administrative law judge considered the medical opinions relevant to whether employer established that no part of the miner's death was caused by pneumoconiosis at 20 C.F.R. §718.305(d)(2)(ii). Decision and Order at 29-31. The administrative law judge properly found that Dr. Sawyer did not address the cause of the miner's death, and that Dr. Anderson's opinion that "pneumoconiosis . . . helped contribute to [the miner's] death" did not aid employer in rebutting the presumption.[17] Decision and Order at 23; Director's Exhibit 13. The

[15] Clinical pneumoconiosis consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.,* the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by coal dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). Legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[16] We affirm, as unchallenged on appeal, the administrative law judge's findings that employer failed to disprove the existence of clinical and legal pneumoconiosis and, therefore, failed to rebut the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(2)(i). *See Skrack*, 6 BLR at 1-711.

[17] Because the administrative law judge properly found that Dr. Anderson's opinion cannot aid employer in establishing that no part of the miner's death was due to pneumoconiosis, we need not address employer's arguments regarding the weight the administrative law judge accorded to Dr. Anderson's opinion. *See* 20 C.F.R. §718.305(d)(2)(ii); Employer's Brief at 12-15.

administrative law judge further found that the opinions of Drs. Swedarsky and Oesterling do not entirely exclude the miner's clinical pneumoconiosis as a contributing factor in the miner's death and, therefore, do not support rebuttal of the presumption.[18] Decision and Order at 23; Director's Exhibit 23; Employer's Exhibit 6. Finally, the administrative law judge discredited Dr. Castle's opinion that the miner's pneumoconiosis played no role in his death because Dr. Castle based his conclusion on an incorrect premise as to the extent of the miner's clinical pneumoconiosis. Decision and Order at 22. Thus, the administrative law judge concluded that the medical opinions do not establish that no part of the miner's death was caused by pneumoconiosis. *Id.* at 23.

Employer contends that the administrative law judge mischaracterized Dr. Castle's opinion and, therefore, erred in finding it not credible. Employer's Brief at 15-16. Employer's assertion has merit. In concluding that "[the miner's] death was not caused by, contributed to, or hastened by the coal workers' pneumoconiosis present pathologically," Dr. Castle relied, in part, on his review of Dr. Oesterling's pathology report. Employer's Exhibit 8 at 24, 30. The administrative law judge correctly noted that at one point in his opinion, Dr. Castle stated that Dr. Oesterling diagnosed "mild to moderate" clinical pneumoconiosis. Decision and Order at 22, *quoting* Employer's Exhibit 8 at 30. Because Dr. Oesterling actually diagnosed "moderately severe" clinical pneumoconiosis, the administrative law judge found that Dr. Castle based his opinion on an incorrect characterization of Dr. Oesterling's opinion regarding the degree of clinical pneumoconiosis present.[19] Decision and Order at 22. Thus the administrative law judge accorded Dr. Castle's opinion "no weight." *Id.*

As employer correctly asserts, however, earlier in his opinion Dr. Castle correctly noted that Dr. Oesterling diagnosed "moderately severe" coal workers' pneumoconiosis. Employer's Brief at 16, *quoting* Employer's Exhibit 8 at 24. Thus, it is unclear whether Dr. Castle based his opinion on an incorrect premise, or whether his report simply included an editing error. As the administrative law judge did not acknowledge this

[18] As employer does not challenge the administrative law judge's findings that the opinions of Drs. Swedarsky and Oesterling are not sufficient to establish that no part of the miner's death was due to pneumoconiosis at 20 C.F.R. §718.305(d)(2)(ii), they are affirmed. *See Skrack*, 6 BLR at 1-711; Decision and Order at 23.

[19] The administrative law judge gave "significant weight" to Dr. Oesterling's opinion that the miner's clinical pneumoconiosis was "moderately severe." Decision and Order at 22 n.33. As employer does not challenge this finding, it is affirmed. *See Skrack*, 6 BLR at 1-711.

discrepancy and, more importantly, did not resolve it, we must vacate the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption of death due to pneumoconiosis. *See* 30 U.S.C. §923(b) (the fact finder must address all relevant evidence); 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a) (the fact-finder must explain the basis for resolving any conflicts in the evidence); *Wojtowicz*, 12 BLR at 1-165; *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984).

Remand Instructions

On remand, the administrative law judge must reconsider the medical opinions, together with the hospitalization records and death certificate to determine whether claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their opinions. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997).

If the administrative law judge finds that the evidence is sufficient to establish total disability under 20 C.F.R. §718.204(b)(2)(iv), she must determine whether the evidence supportive of a finding of total respiratory disability outweighs the contrary probative evidence. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *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) presumption that the miner's death was due to pneumoconiosis. 30 U.S.C. §921(c)(4) (2012); 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 "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)(ii).

If, however, the administrative law judge finds that the evidence does not establish that the miner was totally disabled, she must determine whether claimant has affirmatively established that the miner had pneumoconiosis, and that his death was due to pneumoconiosis, pursuant to 20 C.F.R. §§718.202(a); 718.205(b).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge