BRB Nos. 13-0486 BLA
and 13-0501 BLA

MABEL SAMONS (Widow of, and on behalf of the Estate of, CASEY SAMONS) Claimant-Respondent v. NATIONAL MINES CORPORATION and OLD REPUBLIC INSURANCE COMPANY Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 06/16/2014 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits in a Subsequent Miner's Claim on Remand and Decision and Order Awarding Benefits in a Survivor's Claim on Remand of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

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

Before: HALL, Acting Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits in a Subsequent Miner's Claim on Remand and Decision and Order Awarding Benefits in a Survivor's Claim on Remand[1] (2006-BLA-05820 and 2007-BLA-05332) of Administrative Law Judge Larry S. Merck, rendered pursuant to provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2012) (the Act). This case is before the Board for the second time. In the administrative law judge's initial Decision and Order, he credited the miner with thirty-one years of coal mine employment and determined that, in the miner's subsequent claim, claimant established the existence of clinical pneumoconiosis and a change in an applicable condition of entitlement. The administrative law judge further found, however, that claimant failed to establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2). With respect to the survivor's claim, the administrative law judge found that claimant did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Accordingly, the administrative law judge denied benefits in both claims.

Upon consideration of claimant's appeal of the denial of benefits in the miner's claim, the Board vacated the administrative law judge's determination that the medical opinion evidence was insufficient to establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(iv). *Samons v. National Mines Corp.*, BRB Nos. 11-0343 BLA and 12-0076 BLA, slip op. at 6 (Jan. 27, 2012)(unpub.). The Board remanded the case and instructed the administrative law judge to reconsider Dr. Jurich's opinion on the issue of total disability in light of the criteria set forth at 20 C.F.R. §718.104(d), and reconsider whether the opinions of Drs. Simpao and Baker support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.*

With respect to claimant's appeal of the denial of benefits in the survivor's claim, the Board affirmed the administrative law judge's finding that the medical evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Samons*, BRB Nos. 11-0343 BLA and 12-0076 BLA, slip op. at 8. Nevertheless, the Board instructed the administrative law judge that, because it had vacated his finding that claimant failed to establish that the miner was totally disabled at 20 C.F.R. §718.204(b)(2)(iv), he was required to reconsider on remand whether claimant

[1] Claimant is the surviving spouse of the miner, who died on July 9, 2005. Director's Exhibit 61. The miner's initial claim, filed on August 9, 1976, was finally denied on March 13, 1989, because he failed to establish any element of entitlement. Director's Exhibit 1. Claimant is pursuing the miner's subsequent claim, filed on March 14, 2003, on behalf of his estate. Director's Exhibit 54. Claimant filed a survivor's claim on July 21, 2005. Director's Exhibit 3.

is entitled to invocation of the rebuttable presumption of death due to pneumoconiosis at amended Section 411(c)(4).[2] *Id.* at 9 n.13. The Board further noted that, if the administrative law judge awarded benefits in the miner's claim, claimant is automatically entitled to survivor's benefits pursuant to amended Section 932(*l*).[3] *Id.*

On remand, the administrative law judge found that claimant established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a) and total disability due to pneumoconiosis at 20 C.F.R. §718.204(b)(2), (c), in the miner's claim. The administrative law judge found, therefore, that the miner was entitled to benefits and further found that claimant is automatically entitled to survivor's benefits pursuant to amended Section 932(*l*). Accordingly, the administrative law judge awarded benefits in both the miner's claim and the survivor's claim.

On appeal, employer argues that the administrative law judge failed to comply with the Board's remand instructions and erred in finding that claimant established total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2), (c) in the miner's claim. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief. Employer reiterates its arguments in a reply brief.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated into the

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[2] The presumption set forth in amended Section 411(c)(4) applies to claims filed on, or after, January 1, 2005, that were pending on, or after, March 23, 2010. 30 U.S.C. §921(c)(4), as implemented by 78 Fed. Reg. 59,102, 59,114 (Sept. 25, 2013)(to be codified at 20 C.F.R. §718.305). Amended Section 411(c)(4) provides a presumption that a miner was totally disabled due to pneumoconiosis, or that his death was due to pneumoconiosis, if the miner had at least fifteen 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. *Id.* The amended Section 411(c)(4) presumption is not available in the miner's claim, as it was filed before January 1, 2005. *Id.*

[3] Under 30 U.S.C. §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 receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*).

[4] Because the miner's coal mine employment was in Kentucky, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See*

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

On remand, the administrative law judge considered whether the medical opinions of Drs. Simpao, Baker and Jurich were sufficient to establish that the miner was totally disabled at 20 C.F.R. §718.204(b)(2). The administrative law judge found that Dr. Simpao's opinion, diagnosing a moderate restrictive impairment, was well-documented and well-reasoned, and gave it "full probative weight." 2013 Decision and Order at 32; Director's Exhibit 7. The administrative law judge also determined that Dr. Simpao's diagnosis was "tantamount to a finding that [the miner] was unable to perform the moderate to heavy labor required of his usual coal mine employment." 2013 Decision and Order at 33. Similarly, the administrative law judge found that Dr. Baker's diagnosis of a moderate to severe obstructive impairment was well-documented and well-reasoned, and entitled to "full probative weight." *Id.*; Claimant's Exhibit 3. He further determined that "Dr. Baker's conclusion that [the miner] was 'totally disabled' is tantamount to a finding that he was unable to perform any type of coal mine employment." 2013 Decision and Order at 33, *quoting* Claimant's Exhibit 3.

Regarding Dr. Jurich's opinion, that the miner did not retain the respiratory capacity to perform his usual coal mine work, the administrative law judge initially observed that the Board had affirmed his determination that Dr. Jurich's opinion was well-reasoned and well-documented. 2013 Decision and Order at 34, *citing Samons*, BRB Nos. 11-0343 BLA and 12-0076 BLA, slip op. at 5-6. The administrative law judge then considered Dr. Jurich's opinion in light of the criteria set forth in 20 C.F.R. §718.104(d)(1)-(4). Concerning the nature of Dr. Jurich's relationship with the miner, the administrative law judge found that his treatment of the miner for chronic obstructive airway disease, emphysema, bronchitis and pulmonary fibrosis supported giving his opinion controlling weight pursuant to 20 C.F.R. §718.104(d)(1). 2013 Decision and Order at 34-35; Director's Exhibits 35-7, 63. The administrative law judge further found that the duration and frequency of Dr. Jurich's long-term treatment from October of 1999 through March 3, 2004, and the near monthly frequency of his visits, supported giving controlling weight to Dr. Jurich's opinion pursuant to 20 C.F.R. § 718.104(d)(2), (3). 2013 Decision and Order at 34-35. The administrative law judge then found that, because Dr. Jurich benefited from "a number of spirometric studies" and physical examinations over a long period of time, the extent of Dr. Jurich's treatment weighed in favor of giving his opinion controlling weight pursuant to 20 C.F.R. §718.104(d). *Id.* at 35. Accordingly, the administrative law judge relied on Dr. Jurich's opinion to determine that claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv), and that the

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Shupe v. Director, OWCP, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 5.

preponderance of newly submitted evidence, as a whole, was sufficient to establish total disability at 20 C.F.R. §718.204(b)(2). *Id.*

Employer contends that the administrative law judge did not resolve the conflict in the evidence regarding the exertional requirements of the miner's last coal mine job, and erred in finding that the miner's work required moderate to heavy labor. Employer further challenges the administrative law judge's characterization of Dr. Baker's opinion as containing a diagnosis of a moderate to severe airway obstruction. In addition, employer maintains that the administrative law judge erred in giving controlling weight to Dr. Jurich's opinion, based on his status as a treating physician.

Employer's allegation of error regarding the administrative law judge's consideration of the exertional requirements of the miner's usual coal mine employment has merit. It is claimant's burden to establish the exertional requirements of the miner's usual coal mine employment, which then provide a basis of comparison for the administrative law judge to evaluate a medical assessment of a miner's capabilities and reach a conclusion regarding total disability. *See McMath v. Director, OWCP*, 12 BLR 1-6 (1988*); Cregger v. U. S. Steel Corp.,* 6 BLR 1-1219 (1984). A miner's "usual coal mine employment" is "the most recent job the miner performed regularly and over a substantial period of time." *Shortridge v. Beatrice Pocahontas Coal Co.,* 4 BLR 1-534, 1-539 (1982). In the present case, the administrative law judge summarized the relevant evidence of record[5] and concluded:

> Although somewhat contradictory as to when he performed each job title, the evidence establishes that [the miner] worked as a loader, belt man,

[5] The Employment History Forms (Department of Labor Form CM-911a) filed in both claims indicate that the miner last worked for employer as a brattice man. Director's Exhibits 1 at 340, 4 at 2. In a letter dated July 28, 1978, employer stated that the miner last worked as a tractor operator. Director's Exhibit 1 at 329. The miner testified at the hearing in his initial claim that he hand loaded coal and ran motors, loading machines, and continuous miners, and did just "about everything in the coal mines." Director's Exhibit 1 at 228-29. Dr. Brandon indicated on his reading of a May 1980 x-ray that the miner worked 32.5 years underground as "a motorman, loading machine, tractor driver." Director's Exhibit 1 at 208. In the July 14, 1981 Decision and Order denying benefits, Administrative Law Judge Frederick D. Neusner found that the miner "was a hand loader; and he ran coal loading machines, continuous miners and motor cars." Director's Exhibit 1 at 173. At the hearing in the miner's subsequent claim and the survivor's claim, claimant testified that the miner "ran machinery, shuttle cars and things like that." Hearing Transcript at 19. Dr. Simpao reported that the miner's job titles included running a scoop, a roof bolter and a shuttle car. Director's Exhibit 7.

> motorman, brattice man, and tractor operator at various times during his coal mine employment. However, I need not make a determination as to which of these jobs [the miner] was performing during his usual coal mine employment because I find, based on the testimony of Drs. Dahhan and Fino, that each of these jobs required moderate to heavy labor. Accordingly, I find that the exertional requirements of [the miner's] usual coal mine employment included moderate to heavy labor.

2013 Decision and Order at 27.

Contrary to the administrative law judge's finding, it is necessary to identify the miner's usual coal mine work, as the characterizations of the miner's employment offered by Drs. Dahhan and Fino are incomplete. A review of the record indicates that Dr. Dahhan reported that the miner worked as a "roof bolter, tractor man and motor man." Director's Exhibit 37 at 2. Dr. Dahhan testified at his deposition that, as a roof bolter, the miner lifted "one or two or sometimes a bundle of roof bolts varying in weight from 15 to 30 pounds;" as a tractor man, the miner exerted a "similar amount of lifting and physical demand;" and as a motorman "some physical demand and lifting up to 25 pounds." Director's Exhibit 40 at 10. Although Dr. Dahhan indicated that the miner's jobs as a roof bolter, tractor man and motorman required him to lift from fifteen to thirty pounds, Dr. Dahhan did not identify the frequency of the lifting required, or any other physical aspect of these jobs, and did not characterize the degree of exertion required to perform them.

Dr. Fino reported that the miner's last job was as a belt man, which "involved a lot of heavy labor." Director's Exhibit 36 at 3. Dr. Fino further testified at his deposition that the miner "would have to lift on a fairly regular basis more than 50 pounds. Belt men, in my experience, have a heavy labor job." Director's Exhibit 40 at 14. Thus, Dr. Fino described the exertional requirements of only one of the miner's jobs – belt man – which he believed to be the last position held by the miner, a belief that conflicts with the miner's Employment History Forms, employer's letter dated July 28, 1978, and the notation on Dr. Brandon's 1981 x-ray reading. Director's Exhibits 1 at 208, 228-29, 340; 4 at 2. Because the administrative law judge did not resolve the conflict in the evidence regarding the miner's usual coal mine work and did not identify substantial evidence in support of his finding that this work required moderate to heavy labor, we must vacate his finding. *See Pifer v. Florence Mining Co.*, 8 BLR 1-153, 1-155 (1985); *Shortridge*, 4 BLR at 1-539.

We also hold that there is merit in employer's allegation that the administrative law judge erred in according controlling weight to Dr. Jurich's opinion, based on his

status as the miner's treating physician.[6] Although the administrative law judge complied with the Board's remand instructions by considering Dr. Jurich's opinion under the criteria in 20 C.F.R. §718.104(d)(1)-(4), he did not address the requirement, set forth in 20 C.F.R. §718.104(d)(5), that "the weight given to the opinion of a miner's treating physician 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). As noted by employer, the administrative law judge did not identify the particular evidence that renders Dr. Jurich's opinion well-documented and well-reasoned.[7] Thus, the administrative law judge's consideration of Dr. Jurich's opinion did not comply with the Administrative Procedure Act (APA), 5 U.S.C. §500 *et seq.*, as incorporated into the Act by 30 U.S.C. §932(a).[8] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). We vacate, therefore, the administrative law judge's determination that Dr. Jurich's opinion is entitled to controlling weight under 20 C.F.R. §718.104(d), based on his status as a treating physician.

In light of the foregoing, we vacate the administrative law judge's determination that the medical opinion evidence was sufficient to establish total disability under 20 C.F.R. §718.204(b)(2)(iv), and outweighed the contrary probative evidence of record to establish total disability under 20 C.F.R. §718.204(b)(2). On remand, the administrative law judge must first determine which job constituted the miner's usual coal mine work.

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[6] We reject, however, employer's assertion that the administrative law judge should have determined that Dr. Jurich's opinion was not adequately documented, as the physician relied on objective study results, which conflicted with the administrative law judge's findings that the pulmonary function studies and blood gas studies were insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(i), (ii). The United States Court of Appeals for the Sixth Circuit has held that the regulations explicitly provide that a physician may base a reasoned medical judgment that a miner is totally disabled on non-qualifying test results. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577, 22 BLR 2-107, 2-123 (6th Cir. 2000).

[7] Contrary to the administrative law judge's characterization, the Board acknowledged, but did not affirm, his prior finding that Dr. Jurich provided a well-reasoned and well-documented opinion on the issue of total disability. *Samons v. National Mines Corp.*, BRB Nos. 11-0343 BLA and 12-0076 BLA, slip op. at 6 (Jan. 27, 2012)(unpub.); *see* 2013 Decision and Order at 34; 2011 Decision and Order at 37.

[8] The Administrative Procedure Act provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

See Pifer, 8 BLR at 1-155; *Shortridge*, 4 BLR at 1-539. The administrative law judge must then make a finding of fact as to the exertional requirements of that position. *See McMath*, 12 BLR at 1-9-10; *Cregger,* 6 BLR at 1-1221. Based on this finding, the administrative law judge is required to determine whether the medical opinion evidence is sufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Specifically, the administrative law judge must consider whether Dr. Simpao provided information sufficient to allow the administrative law judge to treat his diagnosis of a moderate restrictive impairment as a diagnosis of a totally disabling impairment, in accordance with the decision of the United States Court of Appeals for the Sixth Circuit in *Cornett v. Benham Coal Co.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000). In *Cornett*, the court indicated that, in assessing whether a physician's opinion supports a finding of total disability, an administrative law judge should compare the exertional requirements of the miner's usual coal mine employment to the physician's description of the miner's respiratory capabilities. *Id*. The administrative law judge must also determine whether Drs. Baker, Jurich, Dahhan and Fino, who offered explicit opinions as to whether the miner was totally disabled, had an accurate understanding of the exertional requirements of the miner's usual coal mine work and adequately explained their conclusions.[9] *See Cross Mountain Coal, Inc. v. Ward*, 93 F.3d 211, 218-19, 20 BLR 2-360, 2-374 (6th Cir. 1996).

When considering whether the medical opinion evidence is sufficient to establish total disability pursuant to 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 diagnoses.[10] *See Director, OWCP v. Rowe,* 710

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[9] The administrative law judge must also determine whether Dr. Baker diagnosed a moderate to severe obstructive impairment with restriction, or whether he was merely summarizing the results of the pulmonary function study obtained by Dr. Kumar on March 21, 2003. Director's Exhibit 9; Claimant's Exhibit 3. In assessing the extent to which Dr. Baker's opinion on the issue of total disability is documented, he must also resolve the conflict in the medical opinion evidence between Dr. Baker, who found that Dr. Fino's March 26, 2004 pulmonary function study was valid and showed a mild restrictive impairment, and Dr. Fino, who concluded that the study was invalid due to poor effort. Director's Exhibits 40 at 13-14, 49 at 9; Claimant's Exhibit 3 at 2-3.

[10] We reject employer's assertion that the administrative law judge should consider whether Dr. Jurich relied on an accurate smoking history in determining the probative value of his opinion at 20 C.F.R. §718.204(b)(2)(iv). The relative contribution to the miner's impairment by smoking, as opposed to coal dust exposure, is relevant to the issue of total disability causation at 20 C.F.R. §718.204(c). *See Grundy Mining Co. v. Flynn*,

F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). If, on remand, the administrative law judge finds that the medical opinion evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), he must weigh the evidence supportive of a finding of total disability against the contrary probative evidence to determine whether claimant has established that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b) by a preponderance of the evidence. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.* 9 BLR 1-236 (1987) (en banc). Moreover, the administrative law judge is required to set forth all of his findings in detail, including the underlying rationale, in compliance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

To promote judicial efficiency, we also address employer's specific allegations of error regarding the administrative law judge's finding that claimant established that the miner was totally disabled due to pneumoconiosis under 20 C.F.R. §718.204(c). The administrative law judge found that the opinions of Drs. Simpao and Jurich were silent on the issue of disability causation. 2013 Decision and Order at 36; Director's Exhibits 7, 9, 10, 35, 48, 60. Based on his reconsideration of the issue of the existence of legal pneumoconiosis on remand, the administrative law judge determined that Dr. Baker's opinion, identifying coal dust exposure as a contributing cause of the miner's respiratory impairment, was well-reasoned and well-documented, and sufficient to satisfy claimant's burden at 20 C.F.R. §718.204(c). 2013 Decision and Order at 36-37; Claimant's Exhibit 3. In contrast, the administrative law judge found that the opinions of Drs. Fino and Dahhan were not well-reasoned, because they opined, contrary to his findings, that the miner was not totally disabled and did not suffer from legal or clinical pneumoconiosis. 2013 Decision and Order at 37; Director's Exhibits 1, 4, 36, 37, 39, 40, 44, 46, 49; Employer's Exhibits 2, 3, 5, 6.

Employer alleges that the administrative law judge did not properly weigh the opinions of Drs. Fino and Dahhan. Employer also maintains that the administrative law judge should not have reconsidered his prior finding that Dr. Baker's opinion as to the existence of legal pneumoconiosis was neither well-reasoned nor well-documented, as the Board did not instruct him to do so. Employer further contends that the administrative law judge did not provide an adequate explanation for crediting Dr. Baker's diagnosis of legal pneumoconiosis on remand. Employer also reiterates its contention that the administrative law judge mischaracterized Dr. Baker's opinion as containing a diagnosis of moderate to severe obstructive impairment with restriction, based on the March 21, 2003 pulmonary function study. In addition, employer contends that Dr. Baker's diagnoses of legal pneumoconiosis and total disability due to legal

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353 F.3d 467, 483, 23 BLR 2-44, 2-66 (6th Cir. 2003); *Peabody Coal Co. v. Smith*, 127 F.3d 504, 507, 21 BLR 2-180, 2-185 (6th Cir. 1997).

pneumoconiosis are unreasoned, as they consist of "a single phrase that [the miner] is totally disabled due to coal workers' pneumoconiosis and obstruction" and are based solely on the miner's occupational exposure to coal dust. Brief in Support of Petition for Review at 22.

We agree with employer that, if the administrative law judge reaches the issue of total disability causation on remand, he must reconsider his weighing of Dr. Baker's opinion in light of his resolution, at 20 C.F.R. §718.204(b)(2)(iv), of the conflict in the evidence regarding the nature and degree of the respiratory impairment that Dr. Baker purportedly diagnosed. In addition, because the administrative law judge relied, in significant part, on his consideration of the medical opinions at 20 C.F.R. §718.204(b)(2)(iv) to discredit the opinions of Drs. Dahhan and Fino at 20 C.F.R. §718.204(c), we also vacate his findings with respect to their opinions. If the administrative law judge reaches the issue of total disability causation on remand, therefore, he must reconsider the relevant medical opinions in light of his findings at 20 C.F.R. §718.204(b)(2) and 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 diagnoses. *See Rowe,* 710 F.2d at 255, 5 BLR at 2-103. Additionally, the administrative law judge must set forth all of his findings in detail, including the underlying rationale, in compliance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

However, to the extent that employer alleges that the administrative law judge erred in reconsidering whether Dr. Baker's diagnosis of legal pneumoconiosis was reasoned and documented, we reject this contention. When the Board vacates an administrative law judge's decision, the effect is to return the parties to the status quo ante, with all of the rights, benefits and/or obligations that they had prior to the issuance of the decision. *See Dale v. Wilder Coal Co.*, 8 BLR 1-119 (1985). The administrative law judge was permitted, therefore, to revisit the medical opinion evidence on the issue of the existence of legal pneumoconiosis and render new findings. *Id*.

In addition, contrary to employer's allegation, the administrative law judge's decision to credit Dr. Baker's identification of coal dust exposure as a significant contributing cause of the miner's putative respiratory impairment is consistent with the Sixth Circuit's holding in *Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 358, 23 BLR 2-472, 2-483 (6th Cir. 2007).[11] The administrative law judge rationally found that Dr.

[11] The court held in *Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 358, 23 BLR 2-472, 2-483 (6th Cir. 2007), that the administrative law judge permissibly credited the opinion in which Dr. Baker stated that coal dust exposure "probably contributes to some extent in an undefinable portion" to the miner's respiratory impairment.

Baker's determination was supported by his statements that: "with 32 years of underground coal dust exposure compared to approximately [] 22 years of smoking, it would seem [the miner's] coal dust exposure would be an important part of the etiology of any pulmonary problem he may have;" that coal dust exposure was "a significant etiology" of the miner's putative respiratory impairment; that the miner's "chronic dust disease was causally related to the inhalation of coal mine dust; and that the miner's pulmonary condition was "related significantly, in part, and substantially to his coal dust exposure." 2013 Decision and Order at 14, *quoting* Claimant's Exhibit 3; *see Crockett*, 478 F.3d at 358, 23 BLR at 2-483; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. Accordingly, if the administrative law judge determines on remand that the miner was totally disabled, and he credits Dr. Baker's diagnosis of a totally disabling respiratory impairment, he may credit Dr. Baker's diagnosis of total disability due to legal pneumoconiosis.

Because we have vacated the administrative law judge's award of benefits in the miner's claim, we also vacate his determination that claimant was automatically entitled to benefits in the survivor's claim pursuant to amended Section 932(*l*). On remand, should the administrative law judge find that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2), claimant's entitlement to benefits is precluded, as she would not be entitled to the rebuttable presumption of death due to pneumoconiosis set forth in amended Section 411(c)(4), and we have affirmed the administrative law judge's finding that claimant did not affirmatively establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(b).[12] Should the administrative law judge find total disability established in the miner's claim, but deny benefits because the evidence is insufficient to establish that the miner is totally disabled due to pneumoconiosis, the administrative law judge must determine whether claimant is entitled to the amended Section 411(c)(4) presumption of death due to pneumoconiosis. Finally, if the administrative law judge again awards benefits in the miner's claim, claimant's automatic entitlement to benefits in the survivor's claim pursuant to amended Section 932(*l*) must be reinstated.

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[12] The Department of Labor revised the regulation at 20 C.F.R. §718.205, effective October 25, 2013. The language previously found at 20 C.F.R. §718.205(c) is now set forth in 20 C.F.R. §718.205(b). 78 Fed. Reg. 59,102, 59,118 (Sept. 25, 2013).

Accordingly, the Decision and Order Awarding Benefits in a Subsequent Miner's Claim on Remand is affirmed in part and vacated in part, and the Decision and Order Awarding Benefits in a Survivor's Claim on Remand is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge