U.S. Department of Labor

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

BRB Nos. 14-0336 BLA
and 14-0354 BLA

BETTY LANE (o/b/o and Widow of DARRELL LANE) Claimant-Respondent v. ELK RUN COAL COMPANY, INCORPORATED c/o ALPHA NATURAL RESOURCES Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 06/30/2015 DECISION and ORDER

Appeal of the Decision and Order of Alan L. Bergstrom, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams Rutherford and Reynolds), Norton, Virginia, for claimant.

George E. Roeder, III (Jackson Kelly, PLLC), Morgantown, West Virginia, for employer/carrier.

Sarah M. Hurley (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, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (13-BLA-5300, 13-BLA-5630) of Administrative Law Judge Alan L. Bergstrom awarding benefits on claims[1] 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 miner's claim filed on May 7, 2010 and a survivor's claim filed on September 21, 2012.[2]

Applying amended Section 411(c)(4), 30 U.S.C. §921(c)(4),[3] the administrative law judge credited the miner with a total of thirty-three years of coal mine employment, at least eighteen of which was spent in underground mines,[4] and found that the evidence established that the miner had a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, found that claimant invoked the rebuttable presumption that the miner was totally disabled due to pneumoconiosis set forth at Section 411(c)(4). The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law

[1] Employer's appeal in the miner's claim was assigned BRB No. 14-0336 BLA, and its appeal in the survivor's claim was assigned BRB No. 14-0354 BLA. By Order dated September 5, 2014, the Board consolidated these appeals for purposes of decision only.

[2] Claimant is the surviving spouse of the miner, who died on August 24, 2012. Director's Exhibit 25.

[3] As part of the Patient Protection and Affordable Care Act, Public Law No. 111-148, Congress enacted amendments to the Black Lung Benefits Act (the Act), which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4). The Department of Labor revised the regulations to implement the amendments to the Act. The revised regulations became effective on October 25, 2013, and are codified at 20 C.F.R. Parts 718, 725 (2014).

[4] To invoke the Section 411(c)(4) presumption, a miner must establish that he had at least fifteen years of "employment in one or more underground coal mines," or coal mine employment in conditions that were "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4). The "conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine" if a miner demonstrates that he "was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2).

judge awarded benefits in the miner's claim.

The administrative law judge then considered claimant's survivor's claim. The administrative law judge noted that the amendments to the Act revived Section 422(*l*), 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 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*). The administrative law judge found that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 422(*l*). Accordingly, the administrative law judge awarded survivor's benefits.

On appeal, employer argues that the administrative law judge erred in finding that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2) 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. Employer specifically contends that the administrative law judge applied an incorrect rebuttal standard. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs, has filed a limited response, asserting that the administrative law judge applied the correct rebuttal standard. The Director further notes that, if the Board remands this case for further consideration, the Board should instruct the administrative law judge that he may take official notice of several documents pertaining to the credibility of Dr. Wheeler's x-ray interpretations submitted by employer as part of the survivor's claim.[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 Assocs., Inc.*, 380 U.S. 359 (1965).

[5] We affirm, as unchallenged on appeal, the administrative law judge's finding that the miner had at least eighteen years of qualifying coal mine employment for the purpose of invoking the Section 411(c)(4) presumption. *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 West Virginia. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

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

Employer argues that the administrative law judge erred in finding that claimant invoked the Section 411(c)(4) presumption that the miner was totally disabled due to pneumoconiosis. Employer specifically argues that the administrative law judge erred in determining that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2).

Employer initially contends that the administrative law judge erred in determining that the miner's usual coal mine work was as a roof bolter. We disagree. A miner's "usual coal mine work" is the "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 finding that the miner's usual coal mine work was that of a roof bolter, the administrative law judge accurately noted that employer stipulated that the miner "worked for [employer] underground *as a roof bolter and utility man* from October 1982 to October 2000." Decision and Order at 3, citing Joint Exhibit 2 (emphasis added). The administrative law judge also relied upon information provided by the miner on forms entitled "Employment History" (Form CM-911a), and "Description of Coal Mine Work and Other Employment" (Form CM-913), as well as the miner's answers to employer's interrogatories. Decision and Order at 25. On his Form CM-911a, the miner indicated that he last worked as a roof bolter and utility man. Director's Exhibit 3. On his Form CM-913, the miner similarly listed his last coal mine employment as a roof bolter and utility man. He described his duties in this job as follows: "I operated a roof bolter behind two continuous miners after setting timbers to secure the roof. Timbers weighed approximately 80 lbs. each. Environment was very dusty. I had to bolt and return. This is where all the dust was and this was where I found it hard to breathe." Director's Exhibit 4. Finally, in answering employer's interrogatories, the miner indicated that part of his job as a roof bolter involved running an end-loader, setting timbers, and ordering materials.[7] Employer's Exhibit 5 at 5. Because substantial evidence supports the administrative law judge's determination that the miner's usual coal mine work was that of a roof bolter, this finding is affirmed. *Shortridge*, 4 BLR at1-539.

Employer next contends that the administrative law judge erred in finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the medical opinions of Drs. Forehand, Spagnolo, and Farney. Dr. Forehand opined that the miner suffered from a significant respiratory impairment. Director's Exhibit 12. Dr. Forehand further opined

[7] Employer contends that the miner's usual coal mine work was "ordering materials." Employer's Brief at 10. However, the record reflects that the miner's usual coal mine work as a roof bolter encompassed several tasks, including running an end-loader, setting timbers, and ordering materials. Employer's Exhibit 5 at 5.

that the miner had insufficient residual ventilatory capacity to return to perform his last coal mine job as a roof bolter. *Id.* Dr. Spagnolo opined that the miner "did not have a pulmonary/respiratory impairment or condition that was aggravated in any way by the inhalation of coal dust associated with coal mine employment." Employer's Exhibit 16. Although Dr. Farney opined that the miner was totally disabled due to severe atherosclerotic disease, he opined that the miner's "impairment and disability were completely unrelated to coal dust exposure." Employer's Exhibit 18.

In finding that the medical opinion evidence established the existence of a totally disabling respiratory impairment,[8] the administrative law judge credited Dr. Forehand's opinion that the miner suffered from a totally disabling respiratory impairment, noting that the doctor's opinion was well-documented and "adequately reasoned." Decision and Order at 25-26. The administrative law judge found that Drs. Spagnolo and Farney did not address the relevant issue at 20 C.F.R. §718.204(b)(2)(iv), namely, whether the miner was totally disabled from a respiratory standpoint. *Id.* at 27-29. The administrative law judge, therefore, found that the medical opinion evidence established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 30.

Employer contends that the administrative law judge erred in determining that Dr. Forehand's opinion was sufficiently reasoned to support a finding of a totally disabling respiratory impairment. Employer's Brief at 16. We disagree. The administrative law judge found that Dr. Forehand's diagnosis of a significant respiratory impairment and low residual ventilatory capacity "comport[ed] with the underlying medical data he relied upon . . . ." Decision and Order at 26. The administrative law judge specifically noted that Dr. Forehand interpreted the results of the miner's August 11, 2010 pulmonary function study as revealing an "obstructive ventilatory pattern."[9] *Id.* at 25. The administrative law judge further found that Dr. Forehand accounted for the exertional requirements of the miner's usual coal mine work (setting timbers and heavy lifting) in opining that the miner suffered from a totally disabling respiratory impairment. *Id.* at 26. Because it is based on substantial evidence, we affirm the administrative law judge's finding that Dr. Forehand's diagnosis of a totally disabling respiratory impairment is

[8] The administrative law judge found that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). Decision and Order at 22-23.

[9] The administrative law judge noted that the FEV1 values from the August 11, 2010 pulmonary function study were qualifying, both before and after the administration of a bronchodilator. Decision and Order at 23. The administrative law judge also accurately noted that the FVC values were close to qualifying. *Id.* at 26.

sufficiently reasoned.[10] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

Employer next argues that the administrative law judge erred in his consideration of the opinions of Drs. Spagnolo and Farney. We disagree. The administrative law judge accurately noted that Dr. Spagnolo acknowledged that the miner's August 11, 2010 pulmonary function study revealed "moderate airflow obstruction," but "never clearly addressed to what degree, if at all, the [m]iner was disabled *from a respiratory standpoint*, which is the relevant inquiry under 20 C.F.R. §718.204(b)." Decision and Order at 27; Employer's Exhibit 16. The record reflects that Dr. Spagnolo stated only that the miner "did not have a pulmonary/respiratory impairment or condition *that was aggravated in any way by the inhalation of coal dust*" and that "[c]oal dust exposure did not play any role in *any disability* [the miner] *may have* had prior to his death." Employer's Exhibit 16 at 9 (emphasis added). Therefore, substantial evidence supports the administrative law judge's finding that Dr. Spagnolo did not clearly address the degree of the miner's disability. Decision and Order at 27.

The administrative law judge similarly found that Dr. Farney did not directly address whether the miner was totally disabled from a respiratory standpoint. Instead, as the administrative law judge noted, Dr. Farney evaluated the miner's ability to perform his last coal mine job in terms of the miner's cardiac condition only.[11] As the

[10] Employer asserts that the administrative law judge erred in crediting Dr. Forehand's opinion because employer alleges that the doctor did not address the miner's coronary disease. Employer's Brief at 12-13. Initially, we note that the issue before the administrative law judge was whether the miner had a totally disabling respiratory impairment, not the cause of the impairment. *See* 20 C.F.R. §718.204(a). Moreover, the administrative law judge accurately noted that Dr. Forehand "was well aware and took account of the [m]iner's significant history of heart disease" when diagnosing the miner with a totally disabling respiratory impairment. Decision and Order at 26; Director's Exhibit 12.

[11] Dr. Farney noted that the miner's "[s]pirometry suggests the possibility of airflow obstruction but the diagnosis is confounded by the concomitant reduction of FEV1 and FVC." Employer's Exhibit 18. While he noted that the miner was disabled from performing the duties of his regular coal mining work, he attributed the miner's disability to "severe atherosclerotic disease with multiple manifestations including coronary artery disease, carotid artery disease and vascular dementia" and not "coal dust exposure." Id.

administrative law judge accurately noted, Dr. Farney "focus[ed] on the issue of what caused the [m]iner's respiratory symptoms," but did not address the degree to which the miner was disabled from a respiratory standpoint. Decision and Order at 28-29; Employer's Exhibit 18.

A miner is not required to establish that his respiratory impairment arose out of coal mine employment to invoke the Section 411(c)(4) presumption. *Tanner v. Freeman United Coal Co.*, 10 BLR 1-85, 1-86 (1987); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106, 1-108 (1986). Rather, the inquiry is the existence and severity of the respiratory impairment, irrespective of its cause. 20 C.F.R. §718.204(a). Because neither Dr. Spagnolo nor Dr. Farney specifically addressed whether the miner was totally disabled from a respiratory standpoint, irrespective of cause, the administrative law judge found that their opinions did not undermine that of Dr. Forehand. Because it is based upon substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Moreover, the administrative law judge properly weighed the pulmonary function study, blood gas study, and medical opinion evidence, and found that, when weighed together, the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2). *See Copley v. Buffalo Mining Co.*, 25 BLR 1-81, 1-86 (2012); Decision and Order at 30-31. This finding is, therefore, affirmed.

In light of our affirmance of the administrative law judge's findings that the miner had at least eighteen years of qualifying coal mine employment and a totally disabling respiratory impairment, we affirm the administrative law judge's finding that claimant invoked the rebuttable presumption that the miner was totally disabled due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

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

Because claimant invoked the Section 411(c)(4) presumption that the miner's total disability was due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that the miner did not have pneumoconiosis, or by establishing that claimant's pulmonary or respiratory impairment "did not arise out of, or in connection with," his coal mine employment. 30 U.S.C. §921(c)(4). Under the implementing regulation, employer may rebut the presumption by establishing that the miner did not have either legal or clinical pneumoconiosis,[12] 20 C.F.R. §718.305(d)(1)(i),

[12] "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

or by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in §718.201." 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge found that employer failed to establish rebuttal by either method.

Employer initially contends that the administrative law judge improperly restricted employer to the two methods of rebuttal provided to the Secretary of Labor at 30 U.S.C. §921(c)(4). Employer's contention is identical to the one that the Fourth Circuit rejected in *W. Va. CWP Fund v. Bender*, 782 F.3d 129, 138-43, BLR (4th Cir. 2015), and we reject it here for the reasons set forth in that decision.

Employer next contends that the administrative law judge erred in finding that employer failed to establish that the miner did not have clinical pneumoconiosis. Initially, the administrative law judge considered the x-ray evidence submitted in the miner's claim. The record contains five interpretations of an x-ray taken on August 11, 2010. Dr. Forehand, a B-reader, and Dr. Alexander, a B reader and Board-certified radiologist, interpreted the x-ray as positive for pneumoconiosis, Director's Exhibit 12; Claimant's Exhibit 1, and Drs. Meyer, Tarver, and Scott, all of whom are B readers and Board-certified radiologists, interpreted the x-ray as negative for the disease. Employer's Exhibits 1, 3, 6. In weighing the conflicting x-ray evidence, the administrative law judge found that:

> Five qualified physicians have provided conflicting interpretations of the sole chest x-ray submitted in this claim. Dr. Forehand is not as highly qualified to interpret x-rays as the other four physicians, since he is not a Board-certified radiologist, but his interpretation is corroborated by Dr. Alexander's reading. Because the x-ray readings by qualified physicians conflict, this judge finds that the chest x-ray evidence is in equipoise.

Decision and Order at 34.

Employer argues that the administrative law judge erred in finding that the x-ray evidence was "in equipoise." Employer's Brief at 22. We disagree. Because the August 11, 2010 x-ray was interpreted as both positive and negative for pneumoconiosis by the doctors whom the administrative law judge determined to have the best qualifications, the

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employment." 20 C.F.R. §718.201(b). "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 dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

administrative law judge permissibly found that the x-ray evidence was "in equipoise" and, therefore, insufficient to establish that the miner did not have clinical pneumoconiosis. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52-53, 16 BLR 2-61, 2-65-66 (4th Cir. 1992); *see also Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 25 BLR 2-405, 2-424 (7th Cir. 2013) (holding that where the administrative law judge properly considered the qualifications of the physicians reading the miner's x-rays and CT scans, there was nothing inherently wrong with the finding that the evidence was equally balanced). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence does not assist employer in establishing that the miner did not have clinical pneumoconiosis.

Employer also asserts that there is "no discussion in the [administrative law judge's] decision regarding whether the medical opinion evidence demonstrates a diagnosis of clinical pneumoconiosis." Employer's Brief at 23. The proper inquiry, however, when the Section 411(c)(4) presumption is invoked, is not whether the medical opinion evidence demonstrates the existence of pneumoconiosis, but instead concerns whether an employer has established that the miner did not have pneumoconiosis. Additionally, contrary to employer's assertion that the administrative law judge "simply ignored" medial opinion evidence on this issue, he acknowledged that Dr. Spagnolo "opined that there was insufficient evidence of clinical pneumoconiosis," and that Dr. Farney "opined the [m]iner did not suffer from clinical . . . pneumoconiosis." Decision and Order at 37, 39. Furthermore, the administrative law judge determined that the August 11, 2010 x-ray, which Drs. Spagnolo and Farney relied upon as being negative for pneumoconiosis,[13] was inconclusive for the existence of the disease and "does not support an affirmative finding that the [m]iner did not suffer from pneumoconiosis in rebuttal of the 15-year presumption." *Id.* at 34-35. As employer makes no additional contentions of error regarding the administrative law judge's determination that employer failed to disprove the existence of clinical pneumoconiosis, this finding is affirmed.

Employer next contends that the administrative law judge erred in finding that it failed to establish that the miner did not have legal pneumoconiosis. In evaluating whether employer established that the miner did not have legal pneumoconiosis, the administrative law judge considered the medical opinions of Drs. Spagnolo and Farney. Dr. Spagnolo opined that the miner suffered from chronic obstructive pulmonary disease (COPD) unrelated to his coal mine dust exposure. Employer's Exhibit 16 at 8-9. Dr.

[13] Dr. Spagnolo "placed great weight on the [negative readings] by Drs. Scott, Meyer and Tarver," Employer's Exhibit 16 at 9, while Dr. Farney noted that readings "by the most authoritative and qualified board certified radiologists, [] showed no evidence of coal workers' pneumoconiosis." Employer's Exhibit 18 at 12.

Farney opined that "there is no relation of any of his pulmonary or respiratory symptoms to [coal mine] dust exposure." Employer's Exhibit 18 at 15.

The administrative law judge found that Drs. Spagnolo and Farney failed to adequately explain why they eliminated the miner's significant history of coal mine dust exposure as a cause of the miner's lung impairments. Decision and Order at 38-40. The administrative law judge also found that Dr. Spagnolo's opinion, that the miner did not have legal pneumoconiosis, was inconsistent with the premises underlying the regulations because his "belief that pneumoconiosis is not usually progressive influenced [his] opinion." *Id.* at 39. The administrative law judge, therefore, found that employer failed to establish that the miner did not have legal pneumoconiosis.

We reject employer's contention that the administrative law judge erred in his consideration of the opinions of Drs. Spagnolo and Farney. The administrative law judge permissibly questioned the opinions of Drs. Spagnolo and Farney, that the miner's respiratory problems were due solely to heart disease, because he found that the physicians failed to adequately explain why they eliminated the miner's significant history of coal mine dust exposure as a source of his respiratory problems.[14] *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353 (4th Cir. 2013); *Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995); Decision and Order at 38, 40. The administrative law judge, therefore, permissibly discounted the opinions of Drs. Spagnolo and Farney.[15] *See Clark*, 12 BLR at 1-155.

Because the administrative law judge permissibly discredited the opinions of Drs. Spagnolo and Farney,[16] we affirm his finding that employer failed to disprove the existence of legal pneumoconiosis.

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[14] The administrative law judge found that while Drs. Spagnolo and Farney adequately explained their conclusions that heart disease contributed to the miner's respiratory problems, neither doctor provided an adequate explanation for why he eliminated coal mine dust exposure as a causative factor. Decision and Order at 38, 40.

[15] Because the administrative law judge provided a valid basis for according less weight to the opinions of Drs. Spagnolo and Farney, we need not address employer's remaining arguments regarding the weight accorded to their opinions. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

[16] We reject employer's contention that the administrative law judge improperly required employer to "rule out" the miner's coal mine dust exposure as a cause of his respiratory problems. Employer's Brief at 19. There is no indication that the administrative law judge applied such a standard. Instead, the administrative law judge permissibly questioned the credibility of the opinions of Drs. Spagnolo and Farney,

As employer failed to establish that the miner did not have clinical or legal pneumoconiosis, we affirm the administrative law judge's determination that employer did not rebut the Section 411(c)(4) presumption by establishing that the miner did not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i).

Upon finding that employer was unable to establish that the miner did not have pneumoconiosis, the administrative law judge addressed whether employer could establish rebuttal by showing that the miner's disabling respiratory impairment was not due to pneumoconiosis. 30 U.S.C. §921(c)(4); 20 C.F.R. §305(d)(1)(ii). Employer has the burden to establish that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis." *Bender*, 782 F.3d at 143, citing 20 C.F.R. §718.305(d)(1)(ii); *Minich v. Keystone Coal Mining Corp.*, BLR , BRB No. 13-0544 BLA, slip op. at 7 (Apr. 21, 2015) (Boggs, J., concurring & dissenting) (holding that, in order to rebut the presumed fact of disability causation, employer must establish that no part, not even an insignificant part, of the miner's disability was caused by either legal or clinical pneumoconiosis).

Where a doctor has failed to diagnose pneumoconiosis, and the administrative law judge has found the existence of pneumoconiosis, the doctor's opinion as to causation may not be credited at all unless there are "specific and persuasive reasons" for concluding that the doctor's view on causation is independent of his mistaken belief that the miner did not have pneumoconiosis, in which case it may be assigned, at most, "little weight." *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505, BLR (4th Cir. Apr. 17, 2015) (quoting *Scott v. Mason Coal Co.*, 289 F.3d 262, 269-70, 22 BLR 2-373, 2-384 (4th Cir. 2002)); *see also Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995) (recognizing that a doctor's judgment as to whether pneumoconiosis is a cause of a miner's disability is necessarily influenced by the accuracy of his underlying diagnosis).

In this case, the administrative law judge rationally discounted Dr. Spagnolo's opinion, that the miner's pulmonary impairment was not caused by pneumoconiosis, because Dr. Spagnolo did not diagnose clinical pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove the existence of pneumoconiosis. *Epling*, 783 F.3d at 505; *see also Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 41-42. The administrative law judge also permissibly assigned less weight to Dr. Farney's opinion, that pneumoconiosis did not contribute to the miner's totally disabling respiratory impairment, because he found that the doctor's suggestion that the miner's symptoms of

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finding that neither physician adequately explained why he eliminated the miner's coal mine dust exposure as a cause of his respiratory problems.

dyspnea, and his testing results indicative of an obstructive pulmonary disease, could both be attributed to obesity is not supported by the miner's medical records, in that no doctor had specifically diagnosed the miner as suffering from obesity. *Id.* The administrative law judge also discounted Dr. Farney's opinion because he found that the doctor, in attributing the miner's symptoms to heart disease, failed to adequately rule out any effect of concurrent pneumoconiosis. *Id.* Therefore, we affirm the administrative law judge's determination that employer did not rebut the Section 411(c)(4) presumption by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in §718.201." 20 C.F.R. §718.305(d)(1)(ii).

Because claimant established invocation of the Section 411(c)(4) presumption that the miner was totally disabled due to pneumoconiosis, and employer did not rebut the presumption, the administrative law judge's award of benefits in the miner's claim is affirmed.

The Survivor's Claim

Having awarded benefits in the miner's claim, the administrative law judge found that claimant satisfied her burden to establish each fact necessary to demonstrate her entitlement under amended Section 422(*l*) of the Act: that she filed her claim after January 1, 2005; that she is an eligible survivor of the miner; that her claim was pending on or after March 23, 2010; and that the miner had been determined to be eligible to receive benefits at the time of his death. 30 U.S.C. §932(*l*); Decision and Order at 42-43. Therefore, we affirm the administrative law judge's determination that claimant is derivatively entitled to survivor's benefits pursuant to amended Section 422(*l*). 30 U.S.C. §932(*l*); *Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge