BRB No. 13-0297 BLA

CHRISTINE SIZEMORE (Widow of CLARENCE SIZEMORE)	)	
Claimant-Respondent	)	
v.	)	DATE ISSUED: 03/26/2014
SHAMROCK COAL COMPANY, INCORPORATED	)	
Employer-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Ronald E. Gilbertson (Husch Blackwell LLP), Washington, D.C., for employer.

Maia S. Fisher (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: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2007-BLA-5942) of Administrative Law Judge Alice M. Craft awarding benefits on a survivor's claim[1] filed on August 3, 2006, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case is before the Board for the second time.[2]

In her initial decision, the administrative law judge found that the miner had at least twenty years of coal mine employment[3] and that claimant established that the miner had clinical pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(2), 718.203(b), and legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge also found that claimant established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

Upon review of employer's appeal, the Board vacated the administrative law judge's findings that claimant established that the miner had clinical and legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (4). *Sizemore v. Shamrock Coal Co.*, BRB No. 10-0263 BLA (Feb. 16, 2011)(unpub.). The Board also vacated the administrative law judge's finding that claimant established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The Board remanded the case to the administrative law judge to reconsider her findings pursuant to 20 C.F.R. §§718.202(a)(2), (4), and 718.205(c), as well as to consider whether claimant established her entitlement to benefits pursuant to Section 411(c)(4) of the Act,[4] 30 U.S.C. §921(c)(4).

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[1] Claimant is the widow of the miner, who died on July 5, 2006. Director's Exhibit 10. The miner had filed a claim on July 30, 1986, which was denied on December 5, 1991. Director's Exhibit 1.

[2] The full procedural history of this case is set forth in the Board's prior decision. *Sizemore v. Shamrock Coal Co.*, BRB No. 10-0263 BLA (Feb. 16, 2011)(unpub.).

[3] The miner's coal mine employment was in Kentucky. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[4] Congress enacted amendments to the Black Lung Benefits 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 of death 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) (2012). The Department of Labor revised the

On remand, the administrative law judge initially considered claimant's claim pursuant to Section 411(c)(4). The administrative law judge credited the miner with at least twenty years of qualifying coal mine employment, and found that claimant established that the miner had a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), at the time of his death. Thus, the administrative law judge invoked the Section 411(c)(4) presumption of death due to pneumoconiosis. The administrative law judge further found that employer did not rebut the Section 411(c)(4) presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's determination that the miner had the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. Additionally, employer challenges the administrative law judge's 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' Compensation Programs (the Director), filed a limited response brief, asserting that the administrative law judge did not err in evaluating employer's medical opinions for consistency with the premises underlying the 2001 regulations. Employer replied to both claimant and the Director, reiterating its arguments on appeal.[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 supported by substantial evidence, is rational, and is in accordance with applicable law. 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

Employer challenges the administrative law judge's finding that the miner had at least fifteen years of qualifying coal mine employment. Employer initially contends that, in the living miner's claim, Administrative Law Judge Edward J. Murty, Jr., found that

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regulations at 20 C.F.R. Parts 718 and 725 to implement the amendments to the Act, eliminate unnecessary or obsolete provisions, and make technical changes to certain regulations. 78 Fed. Reg. 59,102 (Sept. 25, 2013) (to be codified at 20 C.F.R. Parts 718 and 725). The revised regulations became effective on October 25, 2013. *Id.* We will indicate when a regulatory citation in this decision refers to a regulation as it appears in the September 25, 2013 Federal Register. Otherwise, all regulations cited in this Decision and Order may be found in 20 C.F.R. Parts 718, 725 (2013).

[5] Because employer does not challenge the administrative law judge's finding that the medical evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2), this finding is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

the miner had "over 12 years" of coal mine employment. Therefore, employer asserts that the doctrine of collateral estoppel precludes relitigation of the length of coal mine employment issue in the survivor's claim. Employer's Brief at 11-13. We disagree.

The United States Court of Appeals for the Sixth Circuit has held that for collateral estoppel to apply, four elements must be met:

> (1) the precise issue raised in the present case must have been raised and actually litigated in the prior proceeding;
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> (2) determination of the issue must have been necessary to the outcome of the prior proceeding;
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> (3) the prior proceeding must have resulted in a final judgment on the merits; and
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> (4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding.

Nat'l Satellite Sports, Inc. v. Eliadis, Inc., 253 F.3d 900, 908 (6th Cir. 2001); *see Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-137 (1999)(en banc); *see also Sedlack v. Braswell Servs. Grp., Inc.*, 134 F.3d 219, 224 (4th Cir. 1998). We note that whether the miner had fifteen years of qualifying coal mine employment, a requirement for invoking the Section 411(c)(4) presumption, was not an issue in the living miner's claim. Moreover, claimant was not a party to the miner's claim and, therefore, did not have a full and fair opportunity to litigate any of the issues in that claim. Therefore, contrary to employer's contention, collateral estoppel does not apply to preclude the administrative law judge from making a finding as to whether claimant established that the miner had fifteen years of qualifying coal mine employment.

Employer next contends that the administrative law judge did not adequately explain how she calculated that the miner had at least twenty years of coal mine employment, utilizing the definition of a "year" set forth in 20 C.F.R. §725.101(a)(32). Employer's Brief at 14-15. Thus, employer asserts, the administrative law judge's determination as to the length of the miner's coal mine employment does not comply with 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).[6] Employer's contentions lack merit.

[6] 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. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

The administrative law judge is given great latitude in the computation of years of coal mine employment and, as such, her calculation of years of coal mine work will be upheld, when based on a reasonable method of computation and supported by substantial evidence in the record considered as a whole. *See Clark v. Barnwell Coal Co.*, 22 BLR 1-275, 1-280-81 (2003); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-711 (1985). In making this determination, the administrative law judge must explain what evidence she credits or rejects and why she does so. *See Shapell v. Director, OWCP*, 7 BLR 1-304 (1984); *Fee v. Director, OWCP*, 6 BLR 1-11 (1984).

Here, the administrative law judge referenced her prior findings, in which she noted that, while the miner alleged thirty-three or thirty-four years of coal mine employment, the miner's Social Security earnings records showed only intermittent coal mine employment from 1948 until the 1960s, when he began to meet the average annual earnings for coal miners. Decision and Order at 29; 2009 Decision and Order at 4; Director's Exhibits 5, 6. Crediting the miner with a full year of employment for each year in which he met the average annual earnings for coal miners, the administrative law judge found that the miner worked for seven full years with Kentucky Mountain Coal Company, in the 1960s, and worked for "a little less than 14 years," with Shamrock Coal Company, in the 1970's and 1980s. Decision and Order at 29. Adding the miner's seven full years of employment with Kentucky Mountain Coal Company together with his thirteen full years of employment with Shamrock Coal Company, the administrative law judge concluded that "the miner worked at least [twenty] years in the mines." Decision and Order at 29.

As the administrative law judge explained that her determination was based on the beginning and ending dates of the miner's employment with Kentucky Mountain Coal Company and Shamrock Coal Company, as reported in the miner's Social Security earnings records, and as her determination is supported by substantial evidence in the record, we affirm the administrative law judge's finding that the miner had the fifteen years of coal mine employment necessary to invoke the Section 411(c)(4) presumption.[7]

[7] Review of the record reflects that the miner had intermittent periods of coal mine employment with at least ten different companies between 1950 and 1986, but worked for the longest periods for Kentucky Mountain Coal Company and Shamrock Coal Company. Director's Exhibits 3, 4, 6. The Social Security earnings records relied upon by the administrative law judge show that the miner worked for Kentucky Mountain Coal Company for all four quarters in 1961, 1962, 1963, and 1964, and for additional periods in 1960, and in the years 1965 through 1969. Director's Exhibit 6 at 8. The records also reflect that the miner worked for Shamrock Coal Company from 1972 through 1985. Director's Exhibit 6 at 12. Specifically, the miner worked for all four quarters of 1973, 1974, 1975 and 1976, and for additional periods in 1972 and 1977. *Id.* While the earnings records from 1978 through 1985 do not report the miner's earnings by quarter,

See A & E Coal Co. v. Adams, 694 F.3d 798, 802-03, 25 BLR 2-203, 2-212 (6th Cir. 2012); *Clark*, 22 BLR at 1-280-81.

Employer further asserts that claimant failed to prove that the miner's surface coal mine work was performed in dust conditions substantially similar to those existing underground. Employer's Brief at 21, 23. Employer's contention lacks merit. Subsequent to the issuance of the administrative law judge's Decision and Order, the Department of Labor (DOL) promulgated regulations implementing amended Section 411(c)(4). 78 Fed. Reg. 59,102 (Sept 25, 2013). Those regulations provide that "[t]he conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there."[8] 78 Fed. Reg. at 59,114 (to be

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they do not reflect any year in which the miner's annual earnings decreased. Rather, the miner's annual earnings with Shamrock Coal Company steadily increased from his first full year of employment, in 1973, through 1985. *Id.* Thus, even without considering the miner's additional periods of intermittent coal mine employment, the record reflects that the miner was engaged in coal mine employment for at least four full calendar years with Kentucky Mountain Coal Company and an additional twelve full calendar years with Shamrock Coal Company, for a total of at least sixteen years. Director's Exhibit 6 at 8, 12. Thus, error, if any, in the administrative law judge's determination that the miner had at least twenty years of coal mine employment is harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278 (1986).

[8] The comments accompanying the Department of Labor's regulations further clarify claimant's burden in establishing substantial similarity:

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

78 Fed. Reg. at 59,105.

codified at 20 C.F.R. §718.305(b)(2)); *see also Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988).

As summarized by the administrative law judge, the miner testified, in connection with his own claim, that during his nearly fourteen years of surface employment with Shamrock Coal Company he worked as a bulldozer operator, high lift operator, and end loader operator, pushing or loading coal through a silo onto trains. Decision and Order at 4; 1991 Hearing Tr. at 18. The miner testified that there was "quite a bit of dust" and that he was exposed to coal and rock dust "about every shift." Decision and Order at 4; 1991 Hearing Tr. at 19. Further, according to the miner, while he was performing his surface duties the fan from his bulldozer would blow the coal dust and it "would come right back on [him]," and was "just about continual." Decision and Order at 4; 1991 Hearing Tr. at 38-39. The miner also testified that during his years with Kentucky Mountain Coal Company, he worked at the tipple, loading coal out of a shaker into a truck, where there was "plenty of dust" which he breathed every day. Decision and Order at 4; 1991 Hearing Tr. at 20. Based on the miner's uncontradicted testimony, the administrative law judge permissibly found that all of the miner's surface mine employment, at least fifteen years, took place in conditions "substantially similar" to those in underground employment. 20 C.F.R. §718.305(b)(2); *see also Leachman*, 855 F.2d at 512-13; Decision and Order at 29. We, therefore, affirm the administrative law judge's finding that claimant established that the miner had more than fifteen years of qualifying coal mine employment, and satisfied the requirement of Section 411(c)(4).

In light of our affirmance of the administrative law judge's findings that claimant established that the miner had fifteen years of qualifying coal mine employment, and that he had a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2), we also affirm the administrative law judge's finding that claimant invoked the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4).

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

Because claimant invoked the presumption of death due to pneumoconiosis at Section 411(c)(4), the burden of proof shifted to employer to establish rebuttal by disproving the existence of clinical and legal pneumoconiosis,[9] or by proving that the

[9] "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 to that deposition caused by 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).

miner's death did not arise out of, or in connection with, his coal mine employment. 30 U.S.C. §921(c)(4); *Copley v. Buffalo Mining Co.*, 25 BLR 1-81, 1-89 (2012). To prove that the miner's death did not arise from his coal mine employment, employer had to establish "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); 78 Fed. Reg. at 59,115. The administrative law judge found that employer did not establish rebuttal by either method. Decision and Order at 31-38.

In determining whether employer disproved the existence of legal pneumoconiosis, the administrative law judge considered the opinions of Drs. Rosenberg and Vuskovich. Dr. Rosenberg diagnosed obstructive lung disease, due to smoking, and hypoxia, due to interstitial fibrosis with pneumonia and thromboembolic disease, and opined that the miner did not suffer from any coal mine dust-related pulmonary condition. Employer's Exhibits 1-3, 9. Dr. Vuskovich diagnosed a mild obstructive pulmonary impairment, due to a combination of coal mine dust exposure and smoking, but agreed with Dr. Rosenberg that the major, disabling components of the miner's pulmonary impairment were a gas exchange abnormality and the pulmonary consequences of esophageal reflux, congestive heart failure, and valvular heart disease, including pulmonary fibrosis and pneumonia. Employer's Exhibits 4, 5, 8.

The administrative law judge discredited the opinions of Drs. Rosenberg and Vuskovich because she found that each was inadequately explained and inconsistent with the scientific views endorsed by the Department of Labor (DOL) in the preamble to the 2001 regulatory revisions. Decision and Order at 36-37. The administrative law judge therefore found that employer failed to disprove the existence of legal pneumoconiosis. Decision and Order at 37.

Employer contends that the administrative law judge failed to provide valid reasons for finding that the opinions of Drs. Rosenberg and Vuskovich did not disprove the existence of legal pneumoconiosis. Employer's Brief at 23-40. We disagree. As set forth below, the administrative law judge permissibly found that the reasons given by Drs. Rosenberg and Vuskovich for excluding coal mine dust exposure as a cause of the miner's pulmonary impairment were not persuasive. *See Director, OWCP v. Rowe*, 710 F. 2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

Initially, we reject employer's contention that the administrative law judge erred in referring to the preamble to the 2001 regulatory revisions in determining the credibility of the medical opinion evidence. Employer's Brief at 34-35. It was within the administrative law judge's discretion to consult the discussion by DOL of sound medical science in the preamble to the amended regulations, when evaluating the reasoning of the medical opinions in this case. *Adams*, 694 F.3d at 802, 25 BLR at 2-211; *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489, 25 BLR 2-135, 2-151 (6th Cir. 2012).

Further, contrary to employer's contention, the administrative law judge did not utilize the preamble as a legal rule, or as a presumption that all obstructive lung disease is pneumoconiosis, but merely consulted it as a statement of medical principles accepted by DOL when it revised the definition of pneumoconiosis to include obstructive impairments arising out of coal mine employment. *Adams*, 694 F.3d at 801-02, 25 BLR at 2-210-11; *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-16, 25 BLR 2-115, 2-129-32 (4th Cir. 2012); Employer's Brief at 34-35.

Specifically, noting that the preamble to the revised regulations acknowledges the prevailing views of the medical community that the risks of smoking and coal mine dust exposure are additive, the administrative law judge permissibly discounted the opinions of Drs. Rosenberg and Vuskovich, in part, because neither physician adequately explained why the miner's coal mine dust exposure could not have contributed to the miner's pulmonary impairment, along with the effects of the miner's cigarette smoking and other medical conditions.[10] *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Crockett Colleries, Inc. v. Barrett,* 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007)*; Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 36-37, *citing* 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000).

Thus, the administrative law judge provided valid reasons for discrediting the opinions of Drs. Rosenberg and Vuskovich, that coal mine dust exposure did not contribute to the miner's disabling pulmonary impairment.[11] Therefore, we reject employer's allegations of error, and affirm the administrative law judge's finding that employer did not disprove the existence of legal pneumoconiosis. We therefore affirm the administrative law judge's determination that employer did not rebut the Section 411(c)(4) presumption by disproving the existence of pneumoconiosis.[12] *See Morrison*, 644 F.3d at 480, 25 BLR at 2-9.

[10] Moreover, as Dr. Vuskovich opined that the miner suffered from a mild obstructive pulmonary impairment, due to a combination of coal mine dust exposure and smoking, his opinion does not assist employer to meet its burden to disprove the existence of legal pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2); Employer's Exhibit 8 at 11, 13.

[11] Thus, we need not address employer's remaining arguments concerning the administrative law judge's discounting of the opinions of Drs. Rosenberg and Vuskovich. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

[12] Because employer's failure to disprove the existence of legal pneumoconiosis precludes a rebuttal finding that the miner did not have pneumoconiosis, *see Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011), we need not

Employer next argues that, in finding that employer did not establish rebuttal by showing that the miner's death was not due to pneumoconiosis, pursuant to 30 U.S.C. §921(c)(4), the administrative law judge failed to provide valid reasons for discrediting the opinions of Drs. Rosenberg and Vuskovich. Employer's Brief at 41-17.

In determining whether employer established that the miner's death did not arise out of, or in connection with, coal mine employment, the administrative law judge considered the opinions of Drs. Jenkins, Rosenberg, and Vuskovich. The administrative law judge correctly noted that both Dr. Jenkins[13] and Dr. Rosenberg[14] identified respiratory failure as a contributing cause of the miner's death. In contrast, only Dr. Vuskovich opined that the miner died solely "from a heart attack." Employer's Exhibit 4 at 15; Employer's Exhibit 8 at 10. Contrary to employer's contention, the administrative law judge permissibly discredited Dr. Vuskovich's opinion, attributing the miner's death solely to a cardiac condition, because it was inconsistent with the weight of the evidence, including the opinions of Drs. Jenkins and Rosenberg. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 38; Employer's Exhibits 4, 5, 8. In asserting that Dr. Vuskovich offered a well-reasoned opinion as to the cause of the miner's death, Employer's Brief at 46, employer is asking the Board to reweigh the evidence, which the Board is not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

The administrative law judge also permissibly discredited the opinion of Dr. Rosenberg, that coal mine dust exposure played no role in the miner's respiratory-related death, because Dr. Rosenberg did not diagnose the miner with legal pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove legal pneumoconiosis. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 1233, 17 BLR 2-97, 2-104 (6th Cir.

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address employer's contention that the administrative law judge erred in her analysis of the biopsy and computerized tomography evidence, relating to the existence of clinical pneumoconiosis. *See* 20 C.F.R. §718.106(c); *Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 890-92, 22 BLR 2-409, 2-418-22 (7th Cir. 2002).

[13] Dr. Jenkins attributed the miner's death to respiratory failure, emphysema, atrial fibrillation, and coronary artery disease. Director's Exhibits 10, 20.

[14] Dr. Rosenberg opined that the miner "developed respiratory failure secondary to his interstitial lung disease with superimposed pneumonia," and "in conjunction with his respiratory failure, he had an acute cardiac event, namely a myocardial infarction." Employer's Exhibit 9 at 6. Dr. Rosenberg stated that the causes of the miner's death were unrelated to coal mine dust exposure. *Id*.

1993), *vac'd sub nom., Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev'd on other grounds, Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); Decision and Order at 38. Thus, we affirm the administrative law judge's finding that employer failed to establish that the miner's death was unrelated to pneumoconiosis pursuant to Section 411(c)(4).

Because claimant established invocation of the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis, and employer did not rebut the presumption, the administrative law judge properly awarded benefits. 30 U.S.C. §921(c)(4).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge