U.S. Department of Labor

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

BRB No. 17-0079 BLA

LILLIE M. HALL (Widow of GARNIE M. HALL)	)	
Claimant-Petitioner	)	
v.	)	
CLINCHFIELD COAL COMPANY	)	DATE ISSUED: 03/01/2018
and	)	
PITTSTON COMPANY	)	
Employer/Carrier-Respondents	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Lillie M. Hall, St. Paul, Virginia.[1]

Kendra Prince (Penn Stuart & Eskridge), Abingdon, Virginia, for employer.

[1] Diane Jenkins, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision, but Ms. Napier is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

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

PER CURIAM:

Claimant[2] appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2014-BLA-5921) of Administrative Law Judge Drew A. Swank, rendered on a survivor's claim filed on October 29, 2013, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge credited the miner with 27.93 years of mostly underground coal mine employment, but found that the evidence was insufficient to establish that the miner was totally disabled at the time of his death. Thus, the administrative law judge found that claimant was unable to invoke the rebuttable presumption that the miner's death was due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[3] Finding that the evidence was also insufficient to establish that the miner had pneumoconiosis, the administrative law judge concluded that claimant failed to establish a requisite element of entitlement and denied benefits.

On appeal, claimant generally challenges the denial of her claim. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response, unless specifically requested to do so by the Board.

In an appeal by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *See Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational,

[2] Claimant is the widow of the miner, Garnie M. Hall, who died on November 8, 2008. Director's Exhibit 9. Because there is no indication in the record that the miner was eligible to receive benefits at the time of his death, claimant is not eligible for automatic survivor's benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. 932(*l*) (2012).

[3] Under Section 411(c)(4), a miner's death is presumed to be due to pneumoconiosis if claimant establishes that 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 also suffered from a totally disabling respiratory or pulmonary impairment at the time of his death. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305.

supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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

Because the miner worked for more than fifteen years in underground coal mines, the proper inquiry for invocation of the Section 411(c)(4) presumption in this survivor's claim is whether the miner was totally disabled "at the time of his death." 20 C.F.R. §718.305(b)(1)(iii). In the absence of contrary probative evidence, a claimant may establish total disability based on pulmonary function testing, arterial blood-gas studies, evidence of cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv).

Because there are no qualifying pulmonary function or arterial blood-gas studies,[5] the administrative law judge properly found that claimant is unable to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii). Decision and Order at 14-16; Director's Exhibit 1; Employer's Exhibit 21. Additionally, as there is no evidence indicating that the miner had cor pulmonale with right-sided congestive heart failure, we affirm the administrative law judge's finding that claimant is unable to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 16.

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge noted that the miner's usual coal mine employment was as a repairman in a preparation plant, but he did not specifically identify the exertional requirements of that job. Decision and Order at 17. Finding that "[n]either claimant nor employer submitted a report which address[ed] whether the miner could have performed his usual coal mine work or comparable and gainful employment[,]" the administrative law judge concluded that claimant was unable to establish total disability based on the medical opinion evidence. *Id*.

Contrary to the administrative law judge's analysis, a physician need not specifically state whether a miner is totally disabled from his usual coal mine

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner's coal mine employment was in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 5, 6.

[5] A "qualifying" pulmonary function study or blood-gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A non-qualifying study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

employment in order for his or her opinion to support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894, 13 BLR 2-348, 2-356 (7th Cir. 1990); *Black Diamond Coal Co. v. Benefits Review Board* [*Raines*], 758 F.2d 1532, 1534, 7 BLR 2-209, 2-210 (11th Cir. 1985). An administrative law judge may reasonably compare a physician's opinion expressed in terms of physical limitations, with the exertional requirements of a miner's usual coal mine work. *See Cornett v. Benham Coal, Inc*., 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000). Furthermore, a medical opinion may support a finding of total disability if it provides sufficient information from which the administrative law judge can reasonably infer that a miner is or was unable to do his last coal mine job. *See Poole*, 897 F.2d at 894, 13 BLR at 2-356; *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142, 19 BLR 2-257, 2-263 (4th Cir. 1995); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988).

In this case, the administrative law judge erred in failing to consider whether the physical limitations identified by Drs. Modi and Agarwal would have precluded the miner from meeting the exertional requirements of his usual coal mine employment. *See Cornett*, 227 F.3d at 578, 22 BLR at 2-124. In a report dated September 8, 1987, Dr. Modi noted that the miner had: "a history of shortness of breath for the last [twelve] years. It has come on gradually to a point where he can only walk about 500 feet on level ground before he ends up with shortness of breath." Claimant's Exhibit 3. In a treatment note dated January 22, 2007, Dr. Agarwal indicated that the miner complained of shortness of breath and was able to walk approximately 300 to 400 feet.[6] Employer's Exhibit 14.

The administrative law judge also erred in failing to consider additional evidence in the record bearing on the miner's respiratory condition at the time of his death. The record is clear that the miner had metastatic cancer that spread to his lungs. Employer's Exhibits 1, 3, 8, 13. The death certificate lists the immediate cause of the miner's death as "respiratory failure" due to metastatic cancer of "unknown primary [origin]." Claimant's Exhibit 2. Furthermore, in his September 7, 2016 report, Dr. Castle reviewed treatment and hospital records pertaining to the last two years of the miner's life[7] and

[6] Dr. Agarwal treated the miner for asthma and reported on December 21, 2007, that the miner was "able to carry out all of his activities of daily living," and on June 25, 2008, that the miner could walk approximately one mile *with his symptoms of shortness of breath controlled with medication*. Employer's Exhibit 14.

[7] Dr. Castle reviewed treatment notes from Dr. Agarwal dated January 27, 2007, February 22, 2007, June 22, 2007, December 21, 2007, June 25, 2008 and October 13, 2008, along with records from Norton Community Hospital, dating from October 12, 2008 until the miner's death on November 8, 2008. Employer's Exhibit 23.

described the miner as having: complaints of shortness of breath; episodes of "respiratory distress" that led to several hospital admissions; wheezing with increased cough; a "non-productive cough;" chronic obstructive pulmonary disease; "cannonball lesions on chest x-ray;" CT scan findings of "widespread metastatic carcinoma involving both lungs and pleura as well as the mediastinum;" and treatment of pneumonia and probable bronchial asthma. *Id*. Dr. Castle noted that the miner was prescribed supplemental oxygen on October 23, 2008. Employer's Exhibit 6. The administrative law judge failed to consider whether this evidence and Dr. Castle's statement that the miner "did not have any evidence of respiratory impairment from any cause *prior to the development of widely metastatic carcinoma to both lungs*"[8] supports a finding that the miner was disabled from a respiratory standpoint *after* the diagnosis of metastatic lung cancer.[9] *Id*. (emphasis added); *see* 20 C.F.R. §718.305(b)(1)(iii).

Because the administrative law judge did not address all of the relevant evidence in reaching his determinations at 20 C.F.R. §718.204(b), his decision fails to satisfy the requirements of the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).[10] *See Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). We therefore vacate the administrative law judge's finding that claimant failed to invoke the Section 411(c)(4) presumption and we remand this case for further consideration of whether the miner had a totally disabling respiratory or pulmonary impairment "at the time of his death." 20 C.F.R. §718.305(b)(1)(iii).

Entitlement under 20 C.F.R. Part 718 – Existence of Pneumoconiosis

Because the administrative law judge found that claimant was not entitled to the Section 411(c)(4) presumption, he considered the claim under 20 C.F.R. Part 718. In a survivor's claim, where the presumptions at Sections 411(c)(3) and 411(c)(4) do not

[8] The first diagnosis of "diffuse metastatic disease" appears to be on October 12, 2008. Employer's Exhibit 13.

[9] Claimant may establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv) without regard to the cause of the disability, which is addressed under 20 C.F.R. §718.204(c) or in consideration of rebuttal of the Section 411(c)(4) presumption.

[10] The Administrative Procedure Act (APA) 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 Black Lung Benefits Act by 30 U.S.C. §932(a).

apply,[11] claimant must establish by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993). In the interest of judicial economy, we address the administrative law judge's finding that the evidence is insufficient to establish that the miner had pneumoconiosis.

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge indicated that the record included five interpretations of three x-rays dated January 18, 1985, October 12, 2008, and October 22, 2008. Decision and Order at 9-11. In his x-ray chart, the administrative law judge summarized the x-ray readings as follows. Dr. Fisher, a dually-qualified B reader and Board-certified radiologist, interpreted the January 18, 1985 x-ray as positive for pneumoconiosis, while Dr. Halbert, also dually qualified, and Dr. Wiot, a Board-certified radiologist but not a B reader,[12] read the same x-ray as negative. Claimant's Exhibit 1; Employer's Exhibits 19, 20. Dr. Castle, a B reader, was the only physician to read the October 12 and 22, 2008 x-rays, and he found them to be negative for pneumoconiosis. Employer's Exhibit 23 at 13. The administrative law judge concluded that claimant did not establish clinical pneumoconiosis by the x-ray evidence based on "the qualifications of the readers and the fact that only one of the five designated x-ray readings [was] positive for coal workers' pneumoconiosis." Decision and Order at 10.

Initially, we conclude that the administrative law judge erred in failing to resolve the conflict in the readings of the January 18, 1985 x-ray. *See Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 148-49, 11 BLR 2-1, 2-8 (1987), *reh'g denied*, 484 U.S. 1047 (1988) ("[T]he [administrative law judge] must weigh conflicting interpretations of the same X-ray in order to determine whether it tends to prove or disprove the existence of pneumoconiosis."); *Adkins v. Director, OWCP*, 958 F.2d 49, 52, 16 BLR 2-61, 2-66 (4th Cir. 1992); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-65 (2004) (en banc); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1983). Instead of rendering a finding as to whether the January 18, 1985 x-ray was positive or negative for

[11] The administrative law judge correctly found that there is no evidence that the miner had complicated pneumoconiosis, and thus claimant is not entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3) (2012). Decision and Order at 18; *see* 20 C.F.R. §718.304.

[12] Employer describes Dr. Wiot as being both a B reader and a Board-certified radiologist at the time of his reading. Employer's Brief at 7. Employer may raise this issue to the administrative law judge on remand.

pneumoconiosis, the administrative law judge considered the three readings of that x-ray together with the readings of the October 12 and 22, 2008 x-rays, to find that the preponderance of the five readings of the three separate x-rays is negative for pneumoconiosis.

The administrative law judge also failed to address the admissibility of an additional positive reading of the January 18, 1985 x-ray by Dr. Modi. Contrary to the administrative law judge's finding that Dr. Modi's x-ray reading "has not been introduced into evidence in this particular claim," Decision and Order at 19, by letter dated August 18, 2016, claimant, through her lay representative, submitted Dr. Modi's medical report as Claimant's Exhibit 3. Attached to the report was a copy of Dr. Modi's positive reading of a January 18, 1985 x-ray. In the same correspondence, claimant submitted an evidence summary form which did not include Dr. Modi's x-ray reading as either affirmative or rebuttal x-ray evidence, but listed Dr. Modi's report as a treatment record which, if properly characterized as such, is not subject to the evidentiary limitations. *See* 20 C.F.R. §725.414(a)(4) ("[A]ny record of a miner's hospitalization for a respiratory or pulmonary related disease, or medical treatment for a respiratory or pulmonary related disease, may be received into evidence.").

Furthermore, the administrative law judge did not properly consider Dr. Castle's negative readings of the x-rays found in claimant's treatment records, dated October 12 and 22, 2008.[13] Although the quality standards set forth in 20 C.F.R. §718.102(b) and Appendix A to 20 C.F.R. Part 718 do not apply to treatment record x-rays, the standards do apply to Dr. Castle's readings of them, because employer procured his readings "in connection with" the present claim. 20 C.F.R. §718.101(b); *J.V.S.* [*Stowers*] *v. Arch of W. Va./Apogee Coal Co.*, 24 BLR 1-78, 1-89, 1-92 (2008); Employer's Exhibit 23 at 1-2, 13. Pursuant to 20 C.F.R. §718.101(b), any evidence developed in connection with a claim "which is not in substantial compliance with the applicable standards is insufficient to establish the fact for which it is proffered." The administrative law judge noted that Dr. Castle did not classify his readings under the ILO system or identify the film quality as required by 20 C.F.R. §718.102(a), (d)(1). However, the administrative law judge did not determine whether, despite these omissions, Dr. Castle's x-ray readings are in substantial compliance with the applicable quality standards, such that they can be

[13] In the administrative law judge's summary of the x-ray evidence, he observed that Dr. Castle read the October 12 and October 22, 2008 films as showing "no pneumoconiosis." Decision and Order at 10. Dr. Castle stated in regard to the October 12, 2008 x-ray: "no evidence of changes of coal workers' pneumoconiosis or a coal mine dust induced lung disease." Employer's Exhibit 23 at 13. He reported "no evidence of coal workers' pneumoconiosis or coal mine dust induced lung disease" on reading the October 22, 2008 x-ray. *Id*.

deemed sufficient to establish that claimant does not have clinical pneumoconiosis.[14] Decision and Order at 10-11; Employer's Exhibit 23 at 13.

As the administrative law judge failed to adequately explain the weight accorded the conflicting x-ray evidence,[15] properly address whether Dr. Modi's reading of the January 18, 1985 x-ray is admissible pursuant to 20 C.F.R. §725.414(a)(4),[16] and determine whether Dr. Castle's readings of the October 12 and October 22, 2008 x-rays are in substantial compliance with the applicable quality standards,[17] we vacate the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1). *See Wojtowicz*, 12 BLR at 1-165; *McCune*, 6 BLR at 1-998.

Relevant to 20 C.F.R. §718.202(a)(4),[18] the administrative law judge considered the death certificate and the opinions of Drs. Modi and Castle. Decision and Order at 19.

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[14] A physician's finding of "no pneumoconiosis" on an x-ray "may be considered sufficiently detailed" for an administrative law judge to make a factual finding on the presence or absence of pneumoconiosis, notwithstanding its lack of ILO classification. 65 Fed. Reg. 79,919, 79,929 (Dec. 20, 2000).

[15] We note further that, aside from summarizing the qualifications of the physicians, the administrative law judge did not explain his purported reliance on their qualifications to find that the preponderance of x-ray readings is negative for pneumoconiosis. Decision and Order at 9-11.

[16] It is not clear whether the administrative law judge considered Dr. Modi's medical report to be a treatment record. If so, Dr. Modi's x-ray reading should also be admissible as part of the miner's treatment record. If the x-ray reading does not constitute a treatment x-ray, however, the administrative law judge may consider whether it is otherwise admissible as part of claimant's affirmative case evidence or as rebuttal evidence. *See* 20 C.F.R. §725.414(a)(2)(i), (ii).

[17] In addition to considering the lack of an x-ray quality designation and an ILO classification, the administrative law judge must determine whether Dr. Castle read the originals of the x-rays dated October 12 and October 22, 2008, or copies. Dr. Castle described the x-rays as "from Norton Community Hospital on CD-ROM." Employer's Exhibit 23 at 12. Pursuant to 20 C.F.R. §718.102(c)(1), "digital images derived from film screen chest x-rays" are not "considered of suitable quality for proper classification of pneumoconiosis."

[18] Because the record does not contain biopsy or autopsy evidence, the administrative law judge correctly found that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Decision and Order at 11. To the

The administrative law judge correctly found that the miner's death certificate did not mention pneumoconiosis. Claimant's Exhibit 2. With regard to Dr. Modi's diagnosis of clinical pneumoconiosis,[19] the administrative law judge found that it was not well-supported because it was "based in part on an X-ray that was not submitted into evidence, and contrary to the findings at [20 C.F.R. §718.202(a)(1)]." Decision and Order at 19. The administrative law judge further noted that Dr. Modi's report summarized multiple x-ray readings that were not submitted into the record.[20] *Id*. Because the administrative law judge did not properly address the admissibility of Dr. Modi's reading of the January 18, 1985 x-ray, and we have vacated his findings at 20 C.F.R. §718.202(a)(1), we must also vacate the administrative law judge's discrediting of Dr. Modi's diagnosis of clinical pneumoconiosis.

Additionally, the administrative law judge gave controlling weight to Dr. Castle's opinion that the miner did not have clinical pneumoconiosis on the ground that it "is consistent with the admitted diagnostic evidence to include the non-qualifying pulmonary function studies and arterial blood gas tests." Decision and Order at 19. To the extent the administrative law judge is referring to the x-ray evidence as "diagnostic evidence" and we have vacated his crediting of Dr. Castle's x-ray readings and his finding that the x-ray evidence is negative, we are unable to affirm the administrative law judge's reliance on Dr. Castle's opinion. Moreover, contrary to the administrative law judge's finding, whether a pulmonary function or arterial blood gas study is "non-qualifying" is relevant to the issue of total disability but not to the issue of the existence of clinical pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2)(i). Because the administrative law judge failed to adequately explain the weight he accorded the conflicting medical opinions of Drs. Modi and Castle, we vacate his finding that claimant failed to establish

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extent that we have vacated the administrative law judge's finding that claimant did not invoke the Section 411(c)(4) presumption, we also vacate the administrative law judge's finding that claimant is unable to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(3).

[19] "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).

[20] Dr. Modi indicated that he read an October 2, 1985 x-ray as positive and also noted positive readings of films dated October 20, 1985 by Dr. Wolfe, August 29, 1985 by Dr. Aycoth, July 22, 1985 by Dr. Bassali, July 8, 1985 by Dr. Penman, and December 20, 1984 by Dr. Robinette. Claimant's Exhibit 5.

that the miner had clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Wojtowicz*, 12 BLR at 1-165; *McCune*, 6 BLR at 1-998.

Lastly, the administrative law judge failed to properly address whether claimant established that the miner had legal pneumoconiosis.[21] Although the administrative law judge acknowledged that Dr. Modi diagnosed "[i]nterstitial pulmonary fibrosis secondary to [the miner's] coal dust for [thirty-two] years," he did not determine whether Dr. Modi's opinion is sufficient to establish the existence of legal pneumoconiosis, independent of Dr. Modi's positive x-ray reading. 20 C.F.R. §§718.201(a)(2), (b), 718.202(a)(4); 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000) (recognizing that coal mine dust can cause clinically significant obstructive lung disease, even in the absence of x-ray evidence of clinical pneumoconiosis). Further, the administrative law judge did not address the weight he accorded Dr. Castle's opinion that the miner did not have legal pneumoconiosis, independent of his rationale for crediting Dr. Castle's opinion with respect to clinical pneumoconiosis, which we have vacated.[22] Accordingly, on remand we instruct the administrative law judge to render findings regarding the weight he assigns the conflicting opinions of Drs. Modi and Castle on the issue of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

[21] Legal pneumoconiosis is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment that is significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[22] Dr. Castle opined that the miner did not have either clinical or legal pneumoconiosis. Employer's Exhibit 23 at 15.

Remand Instructions

On remand, the administrative law judge must first determine whether claimant is able to establish that the miner was totally disabled at the time of his death for invocation of the Section 411(c)(4) presumption. In rendering his findings, the administrative law judge is instructed to determine the exertional requirements of the miner's usual coal mine work.[23] *See McMath*, 12 BLR at 1-10. He must then reconsider all of the relevant evidence, including the treatment records, death certificate, and medical opinions of Drs. Agarwal, Modi, and Castle in determining whether claimant established that the miner was totally disabled at the time of his death pursuant to 20 C.F.R. §718.204(b)(2)(iv). If the administrative law judge finds that claimant established total disability based on the medical opinion evidence, he must further consider whether claimant satisfied her burden of proof, taking into consideration the contrary probative evidence. 20 C.F.R. §718.204(b); *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987).

If claimant establishes that the miner was totally disabled at the time of his death, she will have invoked the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis. The administrative law judge must then consider whether employer is able to rebut the presumption pursuant to 20 C.F.R. §718.305(d)(2)(i) or (ii). *See W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137, 25 BLR 2-689, 2-699 (4th Cir. 2015); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting). However, if claimant is unable to invoke the presumption, the administrative law judge must reconsider whether claimant is able to establish that the miner had either clinical or legal pneumoconiosis and, if so, whether the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.202(a)(4); 718.205(b); *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 979-80, 16 BLR 2-90, 2-93 (4th Cir. 1992).

[23] The administrative law judge did not previously identify the exertional requirements of the miner's usual coal mine employment. The miner testified regarding his job duties at a hearing held on October 28, 1997. Director's Exhibit 1.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge