U.S. Department of Labor

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

BRB Nos. 17-0095 BLA
and 17-0096 BLA

GLENDINE BELL (o/b/o and Widow of CURTIS BELL) Claimant-Respondent v. ISLAND CREEK KENTUCKY MINING Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 11/29/2017 DECISION and ORDER

Appeals of the Decisions and Orders of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

Barry H. Joyner (Nicholas C. Geale, Acting Solicitor of Labor; Maia S. Fisher, 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, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decisions and Orders (2012-BLA-05418, 2012-BLA-05580) of Administrative Law Judge Joseph E. Kane, awarding benefits on claims 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 subsequent claim[1] filed on May 6, 2011, and a survivor's claim filed on December 13, 2011.[2]

In the miner's claim, the administrative law judge credited the miner with thirty-nine years of coal mine employment,[3] either underground or in conditions substantially similar to those in an underground mine, and found that the miner had a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2).[4] The administrative law judge therefore found that claimant invoked the rebuttable presumption that the miner was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[5] The administrative law judge further

[1] The miner's initial claim for benefits, filed on September 12, 2002, was denied by the district director on October 24, 2003, because the miner did not establish a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1.

[2] The miner died on November 25, 2011. Director's Exhibit 44. Claimant, the widow of the miner, is pursuing the miner's claim on behalf of his estate. Miner's Claim (MC) Decision and Order at 2.

[3] The miner's last coal mine employment was in Kentucky. Director's Exhibit 4. Accordingly, the Board will apply the law 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] Because the new evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2), the administrative law judge found that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. MC Decision and Order at 16-20.

[5] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that the miner was totally disabled due to pneumoconiosis if she establishes 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

found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits in the miner's claim.

In a separate Decision and Order, the administrative law judge found that claimant was entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012), under which the survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits in the survivor's claim.

On appeal in the miner's claim, employer argues that the administrative law judge erred in finding that it failed to rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, asserting that the administrative law judge provided valid reasons for discounting the opinions of two of employer's medical experts when he found that employer did not rebut the presumption. Employer has filed a reply brief, reiterating its arguments.[6]

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. 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).

I. The Miner's Claim

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to establish that the miner had neither legal nor clinical pneumoconiosis,[7] or

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or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

[6] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement at 20 C.F.R. §725.309. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[7] "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). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial

that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The administrative law judge found that employer failed to establish rebuttal by either method. Miner's Claim (MC) Decision and Order at 21-28.

We affirm the administrative law judge's finding that employer failed to disprove the existence of clinical pneumoconiosis, as it is unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that the miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Nevertheless, because legal pneumoconiosis is relevant to the second method of rebuttal, we will address employer's contention that the administrative law judge erred in finding that it failed to disprove the existence of legal pneumoconiosis. *See Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 159 (2015) (Boggs, J., concurring and dissenting).

The administrative law judge considered the medical opinions of Drs. Jarboe and Ghio, and the pathology report of Dr. Crouch.[8] MC Decision and Order at 23-26. All three physicians opined that the miner did not have legal pneumoconiosis. Drs. Jarboe and Ghio opined that the miner suffered from an obstructive respiratory impairment due solely to cigarette smoking and unrelated to coal mine dust exposure. Employer's Exhibits 3, 5, 9, 10, 13. Based on a review of the miner's autopsy slides, Dr. Crouch opined that the miner suffered from emphysema due solely to smoking. Employer's Exhibit 6.

The administrative law judge found that none of the opinions were persuasive because they were not well-reasoned and because aspects of the opinions were contrary to the preamble to the 2001 revised regulations. MC Decision and Order at 25-26. The

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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).

[8] The administrative law judge also considered the report of Dr. Caffrey, and found that it did not address whether the miner had legal pneumoconiosis, but instead addressed only whether he had clinical pneumoconiosis and whether that disease was severe enough to contribute to his total disability. MC Decision and Order at 26; Employer's Exhibit 4. This finding is affirmed, as unchallenged. *See Skrack*, 6 BLR at 1-711.

administrative law judge therefore found that employer failed to establish that the miner did not have legal pneumoconiosis.

Employer contends that the administrative law judge applied an improper rebuttal standard by requiring its physicians to rule out the possibility that coal mine dust contributed to the miner's obstructive lung disease in order to disprove that the miner had legal pneumoconiosis. Employer's Brief at 12-14, 24-25, 30-31. We disagree.

The administrative law judge correctly stated that in order to establish the first method of rebuttal, employer must establish by a preponderance of the evidence that the miner did not have either clinical or legal pneumoconiosis. MC Decision and Order at 20. The administrative law judge also properly noted that legal pneumoconiosis includes "any respiratory or pulmonary impairment that is significantly related to, or substantially aggravated by, dust exposure in coal mine employment." *Id*. at 21, *quoting* 20 C.F.R. §718.201(b). In discounting the opinions of Drs. Jarboe, Ghio, and Crouch, the administrative law judge did not, as employer asserts, require the physicians to "rule out" all contribution from coal mine dust exposure to the miner's obstructive impairment in order to disprove legal pneumoconiosis. Employer's Brief at 12-14, 30-31. Rather, as will be set forth, *infra*, the administrative law judge concluded that none of the three physicians adequately explained why he or she completely excluded coal dust exposure as a significant contributor to the miner's obstructive impairment. MC Decision and Order at 23-26. Consequently, as the administrative law judge applied the correct rebuttal standard in evaluating whether employer disproved the existence of legal pneumoconiosis, employer's assertion of error is rejected.[9] *See Minich*, 25 BLR at 1-154-56.

Employer further contends that, by referring to the preamble to the 2001 revised regulations when discrediting the physicians' medical opinions that the miner's lung disease was unrelated to coal mine dust exposure, the administrative law judge improperly treated the preamble as a "rule of law." Employer's Brief at 16. Contrary to employer's contention, the administrative law judge did not use the preamble as a legal rule, or as a presumption that all obstructive lung disease is pneumoconiosis, but merely consulted the preamble as a statement of credible medical research findings accepted by

[9] Moreover, based on the administrative law judge's determination that the opinions of Drs. Jarboe, Ghio, and Crouch were not adequately reasoned to support their own conclusions, MC Decision and Order at 23-26, they were found not sufficiently credible to rebut the presumed existence of legal pneumoconiosis, regardless of the standard. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1071, 25 BLR 2-431, 2-447 (6th Cir. 2013).

the Department of Labor (DOL) when it revised the definition of pneumoconiosis to include obstructive impairments arising out of coal mine employment. *See Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491, 25 BLR 2-633, 2-645 (6th Cir. 2014); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11 (6th Cir. 2012); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-16, 25 BLR 2-115, 2-129-32 (4th Cir. 2012). We therefore reject employer's contention that the administrative law judge applied an improper rebuttal standard by consulting the preamble when he considered the medical opinion evidence.

With respect to the administrative law judge's specific credibility determinations, we reject employer's argument that he erred in his analysis of the opinions of Drs. Jarboe and Ghio. As an initial matter, substantial evidence supports the administrative law judge's finding that Dr. Ghio's opinion was not persuasive on the issue of legal pneumoconiosis because Dr. Ghio did not specifically address the miner's emphysema, which was documented in the record, or discuss whether the emphysema was related to coal mine dust exposure. *See* 20 C.F.R. §718.201(b); Employer's Exhibit 5; MC Decision and Order at 26. Further, as summarized by the administrative law judge, both Drs. Jarboe and Ghio excluded coal mine dust exposure as a cause of the miner's obstructive impairment because his pulmonary function studies revealed a reduced FEV1/FVC ratio. Employer's Exhibits 3, 5. The administrative law judge permissibly found the physicians' reasoning to be unpersuasive because it conflicted with the medical science accepted by the DOL, recognizing that coal mine dust exposure can cause clinically significant obstructive lung disease, which can be shown by a reduction in the FEV1/FVC ratio. *See* 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); *see Sterling*, 762 F.3d at 490-91, 25 BLR at 2-644-45; MC Decision and Order at 23-25.

Employer argues that the administrative law judge failed to address whether Dr. Jarboe's opinion regarding the FEV1/FVC ratio "and the medical literature on which it is based have negated" the medical science relied upon by the DOL in the preamble. Employer's Brief at 7-11. We disagree. The administrative law judge recognized that Dr. Jarboe "cited several [medical] studies to support his conclusion that coal [mine] dust causes a parallel reduction in [the] FEV1 and [the] FVC, thus preserving the FEV1/FVC ratio." MC Decision and Order at 23; Employer's Exhibit 3 at 7. Among the studies Dr. Jarboe cited was one by Attfield and Wagner, which Dr. Jarboe quoted as stating that both the "FEV1 and [the FVC] appear to decline roughly in parallel with increasing dust exposure, *though the FEV1/FVC ratio also declined*." *Id.* (emphasis added).

Contrary to employer's argument, the administrative law judge permissibly found Dr. Jarboe's reasoning to be unpersuasive, based on the administrative law judge's determination that the Attfield and Wagner study "contradict[s] [Dr. Jarboe's] premise" that coal mine dust exposure does not cause a reduction in the FEV1/FVC ratio. MC

Decision and Order at 23; *see Sterling*, 762 F.3d at 490-91, 25 BLR at 2-644-45; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

Moreover, the administrative law judge noted that, "[e]ven if one accepts Dr. Jarboe's premise that only cigarette smoke can cause a reduction in the FEV1/FVC ratio . . . it is still the [DOL's] position that coal [mine] dust can cause an obstructive [lung] defect in the form of a significant reduction in the FEV1." MC Decision and Order at 23; *see* 65 Fed. Reg. at 79,939-41. The administrative law judge also recognized the DOL's position, as set forth in the preamble, that the risk of developing an obstructive impairment is additive with smoking. *Id*. at 22-23; *citing* 65 Fed. Reg. at 79,940. Contrary to employer's contention, the administrative law judge permissibly found that Dr. Jarboe did "not persuasively address" whether the miner's reduction in FEV1 was due to both smoking and coal mine dust exposure. *See* 20 C.F.R. §718.201(b); *Energy W. Mining Co. v. Estate of Blackburn*, 857 F.3d 817, 828-29 (10th Cir. 2017); *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

Contrary to employer's additional contentions, the administrative law judge did not err in his analysis of other aspects of Dr. Jarboe's opinion that the miner did not have legal pneumoconiosis. Employer's Brief at 15-20. The administrative law judge considered that Dr. Jarboe diagnosed the miner with "reactive airways disease (an element of asthma)," but excluded coal mine dust exposure as a cause because "[t]he inhalation of coal mine dust does not cause reversible airway disease." Employer's Exhibit 3 at 8. However, the administrative law judge noted that the DOL has recognized that chronic obstructive pulmonary disease (COPD) "includes three disease processes characterized by airway dysfunction: chronic bronchitis, emphysema, and asthma," and that medical literature indicates "COPD may be caused by coal [mine] dust exposure." MC Decision and Order at 24, *citing* 65 Fed. Reg. at 79,939. In light of the medical literature relied upon by the DOL in the preamble,[10] the administrative law judge

[10] Employer argues that the administrative law judge failed to compare the "scientific evidence Dr. Jarboe relied on for the proposition that coal [mine] dust does not cause asthma to the evidence the preamble cites for the opposite proposition." Employer's Brief at 17. A review of Dr. Jarboe's report does not disclose support for employer's argument. The articles and studies Dr. Jarboe cited to support his opinion regarding the role of coal mine dust exposure in causing asthma were published between 1975 and 1998 and, therefore, predate the preamble to the 2001 revised regulations. Employer's Exhibit 3 at 8-9. Nor has employer shown how these articles invalidated the science underlying the preamble regarding the potential of coal mine dust exposure to cause chronic obstructive pulmonary disease (COPD), or regarding asthma being one of three disease processes included within COPD. *See Cent. Ohio Coal Co. v. Director,*

permissibly found Dr. Jarboe's statement that coal mine dust does not cause asthma to be an unpersuasive explanation for why the miner's asthma was not related to his coal mine dust exposure.[11] *Sterling*, 762 F.3d at 491, 25 BLR at 2-645; *Adams*, 694 F.3d at 801-02, 25 BLR at 2-210-11; MC Decision and Order at 24.

Additionally, the administrative law judge considered Dr. Jarboe's opinion that, because the miner's "chest x-ray showed no evidence of a 'profusion of simple dust lesions,'" coal mine dust exposure was not a cause of the miner's emphysema.[12] Employer's Exhibit 3 at 9-10. The administrative law judge accurately noted, however, that "coal dust related emphysema may develop independently of clinical pneumoconiosis." MC Decision and Order at 24; *see* 65 Fed. Reg. at 79,920, 79,939-43, 79,971; 20 C.F.R. §718.202(a)(4), (b). He therefore permissibly found that Dr. Jarboe's opinion was unpersuasive because the physician "conflate[d] the concepts of legal and clinical pneumoconiosis" when addressing whether coal mine dust exposure caused, or

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OWCP [*Sterling*], 762 F.3d 483, 490-91, 25 BLR 2-633, 2-644-45 (6th Cir. 2014); *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324, 25 BLR 2-255, 2-265 (4th Cir. 2013) (observing that neither of employer's medical experts "testified as to scientific innovations that archaized or invalidated the science underlying the [p]reamble").

[11] Employer argues that the administrative law judge effectively presumed that asthma is always due to coal mine dust exposure. Employer's Brief at 15. This argument mischaracterizes the administrative law judge's references to the preamble. Because claimant invoked the Section 411(c)(4) presumption, employer bore the burden to prove that the miner's asthma was not significantly related to, or substantially aggravated by, dust exposure in coal mine employment. *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting); 20 C.F.R. §718.201(b). Given DOL's recognition in the preamble that coal mine dust exposure may cause or contribute to COPD, which, in turn, may include asthma, the administrative law judge looked to Dr. Jarboe for sufficient explanation of his opinion that the miner's asthma was not related to coal mine dust exposure.

[12] In his November 12, 2015 deposition, Dr. Jarboe conceded that the miner had simple pneumoconiosis, based on the presence of "microscopic" coal macules identified in the miner's autopsy. Employer's Exhibit 13 at 10-11. However, he reiterated that the physicians who interpreted the miner's x-rays as negative for pneumoconiosis were not wrong, as "microscopic" coal macules would not appear on x-ray. *Id*. at 11. Dr. Jarboe testified that the level of dust in the miner's lungs was insufficient to cause his emphysema. *Id*. at 33.

contributed to, the miner's emphysema. MC Decision and Order at 24; *see Sterling*, 762 F.3d at 492, 25 BLR at 2-647; *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-451 (6th Cir. 2013); *Rowe*, 710 F. 2d at 255, 5 BLR at 2-103. Based on the foregoing discussion, we hold that the administrative law judge provided valid reasons for discounting the opinions of Drs. Ghio and Jarboe.[13]

We also reject employer's argument that the administrative law judge erred in his consideration of Dr. Crouch's opinion. Employer's Brief at 25-32. Dr. Crouch reviewed the miner's autopsy slides and opined that he suffered from "mild simple coal workers' pneumoconiosis" and "emphysema, mixed patterns." Employer's Exhibit 6. She stated that although "coal workers' pneumoconiosis can cause emphysema," the "mixed patterns of emphysema and poor concordance between the amount and distribution of dust and the severity and distribution of emphysema favor another etiology." *Id*. According to Dr. Crouch, the "most likely etiology" of the miner's emphysema was cigarette smoking. *Id*. The administrative law judge recognized the DOL's position, as set forth in the preamble, that the risk of developing an obstructive impairment is additive with smoking. MC Decision and Order at 22-23 *citing* 65 Fed. Reg. at 79,940. Contrary to employer's argument, the administrative law judge permissibly found that Dr. Crouch's opinion was insufficiently reasoned because even if the miner had smoking-related emphysema, Dr. Crouch did not address or explain why coal mine dust exposure did not have "an additive effect on the condition." MC Decision and Order at 26; *see Blackburn*, 857 F.3d at 828-29; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

Substantial evidence supports the administrative law judge's credibility determinations regarding the opinions of Drs. Jarboe, Ghio, and Crouch, and the Board is not empowered to reweigh the evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We therefore affirm the administrative law judge's finding that employer failed to disprove that the miner had legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i).

Having found that employer failed to disprove the existence of pneumoconiosis, the administrative law judge addressed whether employer could establish rebuttal by showing that "no part of the miner's respiratory or pulmonary total disability was caused

[13] Because we affirm the administrative law judge's discounting of Dr. Jarboe's opinion for the reasons set forth above, we need not address employer's additional challenges to the administrative law judge's analysis of Dr. Jarboe's opinion. *See Kozele v. Rochester & Pittsburgh Coal Co*., 6 BLR 1-378, 1-382-83 n.4 (1983); Employer's Brief at 20-24.

by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(ii); MC Decision and Order at 20 n.45, 27. The administrative law judge recognized that employer had to establish that "both clinical and legal pneumoconiosis did not contribute" to the miner's disability. MC Decision and Order at 27. The administrative law judge noted that Drs. Jarboe, Ghio, Crouch, and Caffrey "agreed that the [m]iner's clinical pneumoconiosis was not severe enough to cause an impairment," but "none of them found that the [m]iner suffered from legal pneumoconiosis," contrary to the administrative law judge's finding that employer failed to disprove legal pneumoconiosis. MC Decision and Order at 27-28 & n.71.

The administrative law judge permissibly discounted the disability causation opinions of employer's physicians because the physicians did not diagnose the miner with legal pneumoconiosis. *See Ogle*, 737 F.3d at 1074, 25 at 2-452; *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-473 (6th Cir. 2013). We, therefore, affirm the administrative law judge's determination that employer failed to establish that no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis.[14] *See* 20 C.F.R. §718.305(d)(1)(ii). Consequently, we affirm the award of benefits in the miner's claim.

II. The Survivor's Claim

Relying on the award of benefits in the miner's claim, the administrative law judge issued a separate decision finding that claimant satisfied the prerequisites for automatic entitlement under Section 422(*l*) of the Act.[15] 30 U.S.C. §932(*l*); Survivor's Claim Decision and Order at 3-4. Employer has not separately challenged the award of benefits

[14] Because Dr. Caffrey considered only whether clinical pneumoconiosis contributed to the miner's total disability, n.8 *supra*, we need not address employer's argument that the administrative law judge erred in finding that Dr. Caffrey considered evidence beyond the proper scope of an autopsy rebuttal report under the evidentiary limitations at 20 C.F.R. §725.414. Employer's Brief at 33. Any error in this aspect of the administrative law judge's analysis of Dr. Caffrey's disability causation opinion would be harmless, given employer's failure to establish that no part of the miner's disability was caused by legal pneumoconiosis. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[15] To establish entitlement under Section 422(*l*), claimant must prove that: she filed her claim after January 1, 2005; she is an eligible survivor of the miner; her claim was pending on or after March 23, 2010; and the miner was determined to be eligible to receive benefits at the time of his death. 30 U.S.C. §932(*l*).

in the survivor's claim. Therefore, in light of our affirmance of the award of benefits in the miner's claim, we also affirm the administrative law judge's determination that claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*). 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); *Skrack*, 6 BLR at 1-711.

Accordingly, the administrative law judge's Decision and Orders Awarding Benefits are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge