U.S. Department of Labor

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

BRB Nos. 23-0311 BLA
and 23-0488 BLA

PHYLLIS J. BROWN (o/b/o and Widow of KERMIT Q. BROWN) Claimant-Respondent v. CLINCHFIELD COAL COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 07/30/2024 DECISION and ORDER

Appeals of Decision and Orders Awarding Benefits of Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

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

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

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Orders Awarding Benefits (2020-BLA-05565 and 2022-BLA-05812) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1] This case involves a miner's subsequent claim filed on January 29, 2019,[2] and a survivor's claim filed on February 11, 2022.[3]

The ALJ credited the Miner with 27.48 years of qualifying coal mine employment and found he had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[4] 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305, and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309.[5] He further found Employer did not rebut the presumption and

[1] Claimant is the widow of the Miner, who died on June 30, 2021. Survivor's Claim (SC) Director's Exhibits 2, 4. She is pursuing the miner's claim on her husband's behalf and also is pursuing her own survivor's claim.

[2] This is the Miner's fourth claim for benefits. The Miner filed two claims and withdrew them. Miner's Claim (MC) Director's Exhibits 5, 6. A withdrawn claim is considered not to have been filed. *See* 20 C.F.R. §725.306. On April 28, 2010, the district director denied the Miner's prior claim, filed on June 9, 2009, because he failed to establish any element of entitlement. MC Director's Exhibit 4. The Miner took no further action until filing his current claim. MC Director's Exhibit 8.

[3] Employer's appeal in the miner's claim was assigned BRB No. 23-0311 BLA, and its appeal in the survivor's claim was assigned BRB No. 23-0488 BLA. The Benefits Review Board has consolidated these appeals for purposes of decision only.

[4] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[5] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the Miner did not establish any element of entitlement in his prior claim, Claimant

awarded benefits in the miner's claim. In the survivor's claim, he determined that because the Miner was entitled to benefits at the time of his death, Claimant is automatically entitled to survivor's benefits pursuant to Section 422(*l*) of the Act,[6] 30 U.S.C. §932(*l*) (2018).

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and invoked the Section 411(c)(4) presumption. Alternatively, Employer argues the ALJ erred in finding it did not rebut the presumption. In the survivor's claim, Employer argues the ALJ erred in awarding benefits under Section 422(*l*) because the miner's claim was pending on appeal before the Board and therefore was not effective. It further argues the Board should hold the survivor's claim in abeyance pending the outcome of the miner's claim.[7] Claimant responds in support of the awards of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a response brief urging the Board to reject Employer's arguments regarding Section 422(*l*).[8]

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Orders if they are rational, supported by substantial evidence, and in accordance with applicable law.[9] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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had to submit new evidence establishing at least one element of entitlement to obtain review of the merits of the Miner's current claim. *White*, 23 BLR at 1-3.

[6] Section 422(*l*) of the Act provides that 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 the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[7] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established the Miner had 27.48 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 6.

[8] On May 30, 2024, the Director filed a motion to accept his untimely response to Employer's Petition for Review in the survivor's claim. Director's Response. As no party objected to the Director's request, the Board grants the motion and accepts the response as part of the record. 20 C.F.R. §§802.211, 802.212, 802.217.

[9] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 14; April 26, 2021 Hearing Tr. at 14-15.

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

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). Claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[10] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found Claimant established total disability based on the pulmonary function studies, medical opinions, and evidence as a whole.[11] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 39.

Pulmonary Function Studies

The ALJ considered the results of four pulmonary function studies dated March 1, 2019, August 27, 2019, October 7, 2020, and October 21, 2020.[12] Decision and Order at

[10] A "qualifying" pulmonary function study or arterial blood gas study yields results that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study yields results exceeding those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[11] The ALJ found Claimant did not establish total disability based on the arterial blood gas studies, or evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 10-11.

[12] The ALJ noted the pulmonary function studies indicated different heights for the Miner, ranging from 69.5 to 70 inches. He averaged them to find a height of 69.6 inches. Decision and Order at 8, *citing Protopappas v. Director, OWCP*, 6 BLR 1-221 (1983). Because there are no recorded pulmonary function study values for 69.6 inches in Appendix B of 20 C.F.R. Part 718, the ALJ correctly applied the closest greater table height of 69.7 inches. *See Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 116 n.6 (4th Cir.

7-9; MC Director's Exhibits 25 at 11; 27 at 11; MC Claimant's Exhibits 4 at 8, 15; 6 at 10, 16. He accurately noted the Miner performed these tests when he was either eighty-nine or ninety years old, which exceeds the ages provided in Appendix B of 20 C.F.R. Part 718. *Id*. at 7. Further, the ALJ noted the Board's holding in *K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-47 (2008), that absent contrary probative evidence, pulmonary function studies performed when a miner is over the age of seventy-one must be treated as qualifying if the values produced would be qualifying for a seventy-one-year-old miner, as that is the oldest age for which qualifying values are identified in the regulations. *Id*.

After determining Dr. Sargent's opinion that the pulmonary function studies do not indicate disability for a miner over seventy-one years old is unpersuasive, the ALJ found the March 1, 2019 study Dr. Green conducted invalid based on Dr. Michos's opinion that the MVV values were suboptimal. Decision and Order at 9; MC Director's Exhibit 24. Similarly, he found the August 27, 2019 study Dr. Sargent conducted invalid based on Dr. Green's opinion that the FEV_1 value obtained before bronchodilation was suboptimal. Decision and Order at 9; MC Director's Exhibit 31 at 2. Conversely, he found the October 7, 2020 study Dr. Rajbhandari conducted and the October 21, 2020 study Dr. Nader conducted valid and qualifying both before and after bronchodilation. Decision and Order at 9; MC Claimant's Exhibits 4, 6. He thus concluded the preponderance of the pulmonary function study evidence supports a finding of total disability. Decision and Order at 9.

Employer argues the ALJ erred in discrediting Dr. Sargent's opinion that the pulmonary function study results do not support a finding of total disability based on the Miner's "advanced age." Employer's Brief at 6-9. We disagree.

Dr. Sargent reviewed Dr. Green's opinion that the March 1, 2019 pulmonary function study supports a finding of total disability. MC Director's Exhibit 27 at 3; MC Employer's Exhibits 1; 2 at 12-14. He stated Dr. Green "continues to find" the Miner disabled based on the Department of Labor's (DOL's) standards for a seventy-one-year-old man and "seems to defer" addressing why the DOL's standards for qualifying pulmonary function study values "only go" to age seventy-one. MC Employer's Exhibit 1 at 1. Dr. Sargent stated it is not medically reasonable to compare the results of an eighty-nine or ninety-one-year-old to the "normal" results of a seventy-one-year-old because "lung function deteriorates with age." *Id*.; MC Director's Exhibit 27 at 3; MC Employer's Exhibit 2 at 13-14. He concluded "[t]his is a completely unreasonable standard." MC Employer's Exhibit 1 at 1.

1995); *Carpenter v. GMS Mine & Repair Maint. Inc*., 26 BLR 1-33, 1-37-39 (2023); Decision and Order at 8.

Contrary to Employer's argument, the ALJ permissibly found Dr. Sargent did not adequately explain his assertion that the Appendix B table values are not credible for measuring Claimant's lung function.[13] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc); Decision and Order at 8. The ALJ correctly noted that although Dr. Sargent opined the Miner's pulmonary function study results were normal for his age, he did not set forth what he considered to be appropriate predicted values for the studies or extrapolate the values based on the Miner's age at the time the tests were performed for comparison with those set forth in Appendix B. Decision and Order at 8; MC Director's Exhibit 27 at 3; MC Employer's Exhibits 1; 2 at 12-14. Consequently, we affirm the ALJ's reliance on the table values for a seventy-one-year-old male at Appendix B in assessing whether the pulmonary function studies are qualifying for total disability. *See Meade*, 24 BLR at 1-47; Decision and Order at 8.

Because it is supported by substantial evidence, we affirm the ALJ's determination that the pulmonary function study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 9.

Medical Opinions

The ALJ next considered the medical opinions of Drs. Green, Rajbhandari, Nader, and Sargent. Decision and Order at 11-17. Drs. Green, Rajbhandari, and Nader opined the Miner had a totally disabling respiratory or pulmonary impairment, while Dr. Sargent opined he did not. MC Director's Exhibits 25, 27; MC Claimant's Exhibits 4, 6; MC Employer's Exhibits 1, 2. The ALJ found Drs. Rajbhandari's and Nader's opinions reasoned, documented, and consistent with the weight of the pulmonary function studies. Decision and Order at 13-14. Conversely, he found Drs. Green's and Sargent's opinions

[13] Employer misconstrues the Board's holding in *K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-47 (2008), as requiring the ALJ to credit Dr. Sargent's opinion because it constitutes contrary probative evidence that the pulmonary function studies do not establish total disability. Employer's Brief at 8-9. Contrary to Employer's assertion, the ALJ must consider any contrary probative evidence but retains the duty and discretion to determine whether it is credible to prove that the table values for a seventy-one-year-old at Appendix B are unreliable under the specific facts of the case. In *Meade*, the Board held the party opposing entitlement may offer medical evidence to prove that pulmonary function studies that yield qualifying values for a miner who is seventy-one years old are actually normal or otherwise do not represent a totally disabling pulmonary impairment for a miner who is over the age of seventy-one. *Meade*, 24 BLR at 1-47.

poorly reasoned and unpersuasive. *Id*. at 11-13, 14-16. He thus found the medical opinions support a finding of total disability based on Drs. Rajbhandari's and Nader's opinions.

We reject Employer's argument that the ALJ erred in crediting Drs. Rajbhandari's and Nader's opinions because they failed to explain why the Miner's pulmonary function study results were totally disabling given his "advanced age." Employer's Brief at 10. As already discussed, however, the ALJ permissibly determined the pulmonary function studies Drs. Rajbhandari and Nader conducted are valid and qualifying and support a finding of total disability, and thus rejected Dr. Sargent's contrary opinion. We therefore see no error in the ALJ's crediting their opinions as consistent with the qualifying studies they performed. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

We also reject Employer's argument that Dr. Sargent's opinion is more probative than Drs. Rajbhandari's and Nader's opinions because he reviewed all the Miner's medical records.[14] Employer's Brief at 11. Contrary to Employer's assertion, an ALJ is not required to credit the opinion of a physician who reviewed all of a miner's medical records when the opinion is otherwise not well-reasoned and documented. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996). In this case, the ALJ permissibly found Dr. Sargent's opinion "internally inconsistent" because the doctor initially opined the Miner was not disabled but subsequently opined, in a supplemental report, that he did not have the physical capacity to perform his job from a "respiratory" standpoint. MC Director's Exhibit 27 at 3; MC Employer's Exhibit 1; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; *Clark*, 12 BLR at 1-155; Decision and Order at 16.

Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989); Employer's Brief at 16-18. The ALJ acted within his discretion in finding Drs. Rajbhandari's and Nader's opinions well-reasoned and documented because the data they relied on is adequate to support their conclusions. He also permissibly found Dr. Sargent's opinion poorly reasoned. We thus affirm the ALJ's finding that the medical opinion evidence supports a finding of total disability.[15] 20 C.F.R. §718.204(b)(2)(iv); *see Hicks*,

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[14] We further reject Employer's assertion that the ALJ should have accorded dispositive weight to Dr. Sargent's opinion because he "took [the Miner's] age into account." Employer's Brief at 11. As discussed, the ALJ permissibly found Dr. Sargent's opinion unpersuasive. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149 (1989) (en banc); Decision and Order at 8.

[15] Because Dr. Green opined the Miner was totally disabled, and the ALJ discredited it, we need not address Employer's contention that the ALJ erred in weighing the doctor's

138 F.3d at 533; *Akers*, 131 F.3d at 441; *Clark*, 12 BLR at 1-155; Decision and Order at 13, 14, 16-17.

We further affirm the ALJ's finding that Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 17. Thus, we affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[16] or "no part of [his] 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 ALJ found Employer failed to rebut the presumption by either method.[17]

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

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opinion. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 13; Employer's Brief at 10.

[16] "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). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine 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).

[17] Because he found Employer did not disprove legal pneumoconiosis, the ALJ did not determine whether it disproved clinical pneumoconiosis. Decision and Order at 20.

The ALJ considered Dr. Sargent's opinion that the Miner had a mild impairment "that could be consistent with mild asthma."[18] Director's Exhibit 27 at 1. When asked during his deposition whether the Miner had legal pneumoconiosis, Dr. Sargent testified the Miner had the disease but not to "a substantial degree." Employer's Exhibit 2 at 21-22. Dr. Sargent explained that although coal mine dust exposure could not be excluded as "at least a minor contributing factor," it is "not in any way disabling." *Id.* at 22. He reiterated that he could not eliminate a diagnosis of legal pneumoconiosis because "[the] small amount of obstruction was contributed to by coal dust exposure," which "would be the definition of legal pneumoconiosis." *Id.* at 27-28. The ALJ found Dr. Sargent's opinion insufficient to rebut the presumption of legal pneumoconiosis because the doctor opined the Miner had the disease. Decision and Order at 18-20.

We reject Employer's argument that the ALJ applied the wrong standard "to determine the existence of legal pneumoconiosis." Employer's Brief at 18. Contrary to Employer's argument, the burden is on Employer to disprove the existence of legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); *Minich*, 25 BLR at 1-159; *see also Griffith v. Terry Eagle Coal Co.*, 25 BLR 1-223, 1-227 (2017). The rebuttal inquiry is "whether the employer has come forward with affirmative proof that [the Miner did] not have legal pneumoconiosis, because his impairment [was] not in fact significantly related to his years of coal mine employment." *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018); *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020).

The ALJ recognized the burden shifted to Employer to rebut the presumption by establishing that the Miner had neither clinical nor legal pneumoconiosis. Decision and Order at 18. He applied the correct standard by requiring Employer to affirmatively disprove the existence of legal pneumoconiosis by a preponderance of the evidence. 20 C.F.R. §§718.201(b)(2), (c), 718.305(d)(2)(i)(A); *see Minich*, 25 BLR at 1-155 n.8; *see also Griffith*, 25 BLR at 1-227; Decision and Order at 20. Because Dr. Sargent opined the Miner had legal pneumoconiosis, the ALJ rationally found the doctor's opinion does not assist Employer in meeting its burden to disprove the existence of the disease.[19] *See Smith*,

[18] In his February 10, 2020 supplemental report, Dr. Sargent did not render an opinion on whether the Miner had either clinical or legal pneumoconiosis. Employer's Exhibit 1.

[19] Because Drs. Green, Rajbhandari, and Nader diagnosed legal pneumoconiosis, their opinions do not assist Employer in disproving legal pneumoconiosis. Decision and Order at 20; MC Director's Exhibits 25, 31; MC Claimant's Exhibits 4, 6.

880 F.3d at 699; *Hobet Mining, LLC v. Epling*, 783 F.3d 498 (4th Cir. 2015); *Minich*, 25 BLR at 1-155 n.8.

Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis. Therefore, we affirm the ALJ's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "no part of [the Miner's] disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii); *see W.Va. CWP Fund v. Bender*, 782 F.3d 129, 135 (4th Cir. 2015). The ALJ permissibly discredited Dr. Sargent's opinion on disability causation because the doctor did not opine the Miner had a totally disabling respiratory or pulmonary impairment, contrary to his finding that Claimant established the existence of total respiratory disability. *See Epling*, 783 F.3d at 504-05; Decision and Order at 21; MC Employer's Exhibit 2 at 21-22, 27-28. As it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed to establish no part of the Miner's total respiratory disability was due to legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 21.

We therefore affirm the ALJ's findings that Employer did not rebut the Section 411(c)(4) presumption and Claimant established a change in an applicable condition of entitlement. 20 C.F.R. §725.309; Decision and Order at 21-22. Thus, we affirm the award of benefits in the miner's claim. Decision and Order at 22.

The Survivor's Claim

Based on the award of benefits in the miner's claim, the ALJ found Claimant satisfied her burden to establish each fact necessary to demonstrate entitlement under Section 422(*l*) of the Act: 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*); Survivor's Claim (SC) Decision and Order at 3.

Employer contends the ALJ erred in determining that Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*) because the award of benefits in the miner's claim was not yet effective. SC Employer's Brief at 20-26. The Board has previously rejected this argument, holding an award of benefits in a miner's claim need not be final or effective for a claimant to receive benefits under Section 422(*l*). *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141, 1-145-47 (2014). For the reasons set forth in *Rothwell*, we reject Employer's argument. Because we have affirmed the award of benefits in the miner's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to

survivor's benefits pursuant to Section 422(*l*).[20] 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, the ALJ's Decision and Orders Awarding Benefits in both the miner's claim and the survivor's claim are affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

[20] In light of our affirmance of the award of benefits in the miner's claim, Employer's argument that the ALJ should have held the survivor's claim in abeyance pending resolution of its appeal in the miner's claim is moot. SC Employer's Brief at 20-22.