U.S. Department of Labor

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

BRB Nos. 21-0563 BLA
and 21-0564 BLA

HAROLETTA POTTER (o/b/o and Widow of WILLIAM POTTER)	)	
Claimant-Respondent	)	
v.	)	
MOUNTAINEER COAL DEVELOPMENT d/b/a/ WOLF CREEK COLLIERIES COMPANY	)	
and	)	DATE ISSUED: 10/31/2022
SHELL MINING COMPANY	)	
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits in the Miner's Claim and Decision and Order Awarding Benefits in the Survivor's Claim of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

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

Carl M. Brashear (Hopkins Law Offices, PLLC), Lexington, Kentucky, for Employer.

Sarah M. Karchunas (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Larry S. Merck's Decision and Order Awarding Benefits in the Miner's Claim and Decision and Order Awarding Benefits in the Survivor's Claim (2020-BLA-05440 and 2020-BLA-05454) pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §901-944 (2018) (Act). This case involves a miner's claim filed on August 6, 2018, and a survivor's claim filed on November 27, 2018.[1]

The ALJ found Employer is the correctly named responsible operator. He further found the Miner had 22.25 years of qualifying surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore he determined Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] The ALJ further found Employer did not rebut the presumption and awarded benefits in the miner's claim. Because the Miner was entitled to benefits at the time of his death, the ALJ determined Claimant is automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[3]

[1] The Miner died on October 31, 2018, while his claim was pending before the district director. Miner's Claim (MC) Director's Exhibit 10; Widow's Claim (WC) Director's Exhibit 11. Claimant, the Miner's widow, is pursuing his claim on his behalf, as well as her own survivor's claim. MC Director's Exhibit 11; WC Director's Exhibit 1.

[2] 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 at the time of his death. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[3] Under Section 422(*l*) of the Act, a survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without

On appeal, Employer challenges the constitutionality of the Affordable Care Act (ACA) and its reinstatement of the Section 411(c)(4) presumption and automatic survivor entitlement under Section 422(*l*). It also challenges its designation as the responsible operator, the ALJ's findings that the Miner had at least fifteen years of qualifying coal mine employment, and his determination that it failed to rebut the presumption. Claimant responds in support of the awards of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to affirm the ALJ's finding that Employer is the properly designated responsible operator, and to reject Employer's challenges to the constitutionality of the ACA and to the ALJ's finding that the Miner had at least fifteen years of qualifying coal mine employment.[4]

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Constitutionality of the ACA

Employer summarily contends the ACA, which reinstated the Section 411(c)(4) and 422(*l*) presumptions, Pub. L. No. 111-148, §1556 (2010), violates Article II of the United States Constitution. Employer's Brief at 2. We agree with the Director that Employer's bare assertion does not sufficiently raise the issue for the Board to consider it. *See* 20 C.F.R. §802.211(b); *Samons v. Nat'l Mines Corp.*, 25 F.4th 455, 466-67 (6th Cir. 2022) (party forfeits arguments that are inadequately briefed); *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21

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having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established the Miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 22.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 3; Hearing Transcript at 27.

(1987). Nonetheless, we note Employer's assertion with respect to the constitutionality of the ACA is now moot. *California v. Texas*, 593 U.S. , 141 S. Ct. 2104, 2120 (2021).

Responsible Operator

The responsible operator is the potentially liable operator[6] that most recently employed the miner. 20 C.F.R. §725.495(a)(1). Once the district director designates a responsible operator, that operator may be relieved of liability only if it shows either it is financially incapable of assuming liability for benefits or another potentially liable operator that is financially capable of assuming liability more recently employed the miner for at least one year.[7] 20 C.F.R. §725.495(c)(2).

Employer contends the ALJ erred in finding it is the properly designated responsible operator because Bizzack Construction, LLC (Bizzack) more recently employed the Miner as a coal miner for at least one year.[8] Employer's Brief at 3. Employer asserts Bizzack is a "road construction company" that "performs both highway construction and road construction and road maintenance for coal mines. Thus, the Miner's work operating equipment for Bizzack would be that of a 'miner' since it involved coal mine construction or maintenance and was performed in or around a coal mine." *Id.*

To meet its burden of establishing another potentially liable operator more recently employed the Miner in coal mine employment, Employer must point to evidence he "was

[6] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

[7] Employer timely challenged its designation as the responsible operator before the district director, ALJ, and Board. Employer's Brief at 3-4; Employer's Closing Brief at 2-3; MC Director's Exhibit 47; WC Director's Exhibit 54. Employer however did not submit any evidence to support its position at any stage of the proceedings in this case, including this one.

[8] Employer does not dispute that it is financially capable of assuming liability for the payment of benefits. Employer's Brief at 3-4; Hearing Transcript at 12-13, 15-16.

employed as a miner after he . . . stopped working for the designated responsible operator and that the person by whom he . . . was employed is a potentially liable operator within the meaning of [20 C.F.R.] §725.494." 20 C.F.R. §725.495(c)(2). Although it is undisputed that the Miner worked for Bizzack after his employment with Employer ended, the ALJ found "[t]he problem with Employer's assertion regarding Bizzack's potential role as responsible operator is that there is no evidence to support it, just the Employer's assertion." Decision and Order at 13. We see no error in this finding, nor does Employer identify specific error with it.[9] *See Samons*, 25 F.4th at 466-67. Consequently, we affirm the ALJ's finding that Employer failed to establish Bizzack more recently employed the Miner as a coal miner and that Employer, therefore, is the properly designated responsible operator. 20 C.F.R. §725.495(c)(2); Decision and Order at 14.

Miner's Claim

Invocation of the Section 411(c)(4) Presumption - Qualifying Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had at least fifteen years of "employment in one or more underground coal mines," or coal mine employment in conditions that were "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4). The "conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2); *see Zurich Am. Ins. Grp. v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 663 (6th Cir. 2015); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 489-90 (6th Cir. 2014); *Bonner v. Apex Coal Corp.*, 25 BLR 1-279, 1-282-84, *recon. denied*, (May 24, 2022) (Order) (unpub.).

In addressing whether the Miner was regularly exposed to coal mine dust in his surface coal mine work,[10] the ALJ considered the occupational history the Miner provided

[9] Claimant did not allege he performed coal mine employment for Bizzack. MC Director's Exhibit 3. Further, as the Director states, Employer offered no evidence that Bizzack is a coal mine operator, and there is no record evidence indicating what type of business Bizzack conducted or whether the Miner's duties for Bizzack either involved or were integral to the extraction or preparation of coal. Director's Brief at 5-6.

[10] Because it is unchallenged, we affirm the ALJ's finding the Miner had 22.25 years of surface coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10.

to Dr. Green at the time of his evaluation, the Miner's Form CM-911a Employment History Form, and Claimant's testimony. Decision and Order at 11.

The Miner reported to Dr. Green that he worked in surface mining and on the tipple where he had "heavy coal and rock dust exposure." MC Director's Exhibit 13 at 2. On his CM-911a Employment History Form, the Miner stated that all of his surface mining positions exposed him to dust and fumes. MC Director's Exhibit 3. Claimant testified that the Miner "came home dirty" after his coal mine shifts "with his face black, his hands black. Everything that wasn't covered by clothing, he was covered in coal dust." Hearing Transcript at 20-21. She recounted she had to wash his work clothes "twice" to get them clean sometimes before he "finally" rented uniforms that were cleaned for him. *Id.* at 21. The ALJ found the Miner's statements on his CM-911a form and to Dr. Green concerning his regular coal mine dust exposure consistent and uncontradicted by any record evidence. Decision and Order at 11. Further finding Claimant's testimony as to her husband's dust exposure at work credible, the ALJ determined Claimant established 22.25 years of qualifying employment for purposes of invoking the Section 411(c)(4) presumption. *Id.* at 11-12.

Employer asserts the ALJ erred in finding at least fifteen years of qualifying coal mine employment because none of the Miner's statements or Claimant's testimony the ALJ credited establishes the "regularity" of dust exposure that is substantially similar to underground coal mine work. Employer's Brief at 4. But this is not the standard. Claimant need only establish the Miner's working conditions "regularly" exposed him to coal mine dust.[11] 20 C.F.R. §718.305(b)(2); *Bonner,* 25 BLR at 1-282-4 (credible testimony

[11] The comments accompanying the Department of Labor's (DOL's) regulations discuss a 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.

regarding a miner's appearance and the dust on his clothes when he returned home from work may be sufficient to establish the miner was regularly exposed to coal mine dust); *see Duncan*, 889 F.3d at 304 (rejecting argument that claimant must provide evidence of "the actual dust conditions" and citing with approval the Department of Labor's position that "dust exposure evidence will be inherently anecdotal"); *Kennard*, 790 F.3d at 664 (claimant's "uncontested lay testimony" regarding the dust conditions he experienced "easily supports a finding" of regular dust exposure); *Sterling*, 762 F.3d at 490 (claimant's testimony that the conditions of his employment were "very dusty" sufficient to establish regular dust exposure).

Apart from asserting a legally incorrect standard to assess whether the Miner's surface employment regularly exposed him to coal mine dust, Employer does not challenge the ALJ's factual determination. Employer identifies no specific error in the ALJ's credibility determinations, and we see no error in his permissible finding, drawn from all the uncontradicted evidence considered under the correct standard, that Claimant established the Miner was regularly exposed to coal mine dust in his surface coal mine employment. *See Crockett Colleries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 352-353 (6th 2007); *Wiley v. Consolidation Coal Co.*, 892 F.2d 498, 500 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 254-255 (6th Cir. 1983). Consequently, we affirm his determination that Claimant established the Miner had at least fifteen years of qualifying coal mine employment and thus invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §§718.305(b)(1)(i), 718.305(b)(2); *see Duncan*, 889 F.3d at 304; *Kennard*, 790 F.3d at 663; *Sterling*, 762 F.3d at 489-90; *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); *Bonner*, 25 BLR at 1-282-84; Decision and Order at 11-12.

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,[12] or that

78 Fed. Reg. 59,102, 59,105 (Sept. 25, 2013).

[12] "Legal pneumoconiosis" includes any "chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). 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). "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

"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); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-150 (2015). The ALJ found Employer failed to establish rebuttal by either method.

Clinical Pneumoconiosis

The ALJ found the x-ray interpretations, computed tomography (CT) scan interpretations, and medical opinions unanimously note the presence of fibrotic abnormalities in the Miner's lungs but disagree as to whether the abnormalities are coal workers' pneumoconiosis or idiopathic pulmonary fibrosis (IPF).[13] Decision and Order at 23-30. Employer does not challenge these findings. *Skrack*, 6 BLR at 1-711. However, Employer asserts the ALJ erred in rejecting Drs. Broudy's and Rosenberg's opinions that the Miner had IPF unrelated to his coal mine dust exposure. Employer's Brief at 6-7. We disagree.

Dr. Broudy reviewed a subset of the Miner's medical records and authored a report on October 20, 2020.[14] MC Employer's Exhibit 2. He diagnosed IPF based on Dr. Meyer's x-ray and CT scan interpretations diagnosing "usual interstitial pneumonia" and the fact that the Miner's treating physician prescribed the medication OFEV (nintedanib),[15] which

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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).

[13] The ALJ accurately observed the Miner's treatment records diagnose both clinical pneumoconiosis and pulmonary fibrosis but do not discuss the cause of his pulmonary fibrosis. Decision and Order at 31; MC Employer's Exhibits 6, 7.

[14] Dr. Broudy reviewed the Miner's death certificate, Dr. Green's September 19, 2018 complete pulmonary evaluation on behalf of the DOL and objective studies, Drs. DePonte's and Crum's readings of the Miner's September 19, 2018 x-ray as positive for simple and complicated pneumoconiosis, Dr. Meyer's reading of the same x-ray as "characteristic" of "usual interstitial pneumonia" (UIP) and "not typical of coal workers pneumoconiosis," and Dr. Meyer's reading of the May 15, 2018 CT scan as "characteristic" of UIP and "not typical of coal workers pneumoconiosis." MC Employer's Exhibit 2 (referencing MC Director's Exhibit 13; MC Claimant's Exhibit 1; MC Employer's Exhibits 3-4).

[15] Dr. Green performed a complete pulmonary evaluation of the Miner on behalf of the DOL on September 19, 2019. MC Director's Exhibit 13. He stated the Miner's medications at the time of his examination included "OFEV (nintedanib)." *Id.* at 3.

Dr. Broudy explained is used to treat IPF "and has no use in patients with coal workers' pneumoconiosis." Employer's Exhibit 2 at 1-2. The ALJ found Dr. Broudy's opinion not well reasoned because he did not adequately address whether Claimant had *both* pneumoconiosis and non-coal-dust-related IPF, as the Miner's treatment records document both pneumoconiosis and pulmonary fibrosis, *see* n.13, and did not discuss the positive x-ray readings of Drs. DePonte and Crum despite reviewing them. Decision and Order at 29-30 (citing MC Employer's Exhibits 5, 6).

Employer suggests Dr. Broudy's opinion sufficiently addressed that issue in stating the evidence is consistent with IPF and that there is no basis for diagnosing pneumoconiosis, Employer's Brief at 6; however, the weighing of evidence is the purview of the ALJ. *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 478 (6th Cir. 2011); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989). In light of the presumption that pneumoconiosis exists and the medical opinions that found the existence of pneumoconiosis on x-ray that Dr. Broudy reviewed (but did not discuss), the ALJ acted within his discretion in finding Dr. Broudy's opinion did not adequately address the matter. We therefore affirm his finding. *See Morrison*, 644 F.3d at 478; *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; Decision and Order at 30.

With the exception of Dr. DePonte's reading of the May 15, 2018 CT scan, Dr. Rosenberg reviewed all of the medical evidence of record and authored a report on November 30, 2020.[16] MC Employer's Exhibit 5. He opined the Miner had IPF due to the linear shape of the radiographic abnormalities and their location primarily being in the lung bases, traits which Dr. Rosenberg stated are typical of IPF and not coal workers' pneumoconiosis. *Id*. at 5. The ALJ found Dr. Rosenberg's opinion, like Dr. Broudy's, not well-reasoned because he did not address whether the Miner had both clinical pneumoconiosis and non-coal-dust-related IPF. Moreover, he found Dr. Rosenberg failed to adequately explain his opinion given that Dr. Crum observed rounded opacities and as the applicable regulations do not require clinical pneumoconiosis to appear radiographically as rounded opacities or in a specific lung-zone location. 20 C.F.R. §718.202(a)(1); *see* Decision and Order at 30.

Although Employer contends Dr. Rosenberg adequately explained his opinion by finding the evidence consistent with IPF but not pneumoconiosis, we conclude the ALJ permissibly found, as he did with Dr. Broudy's opinion, Dr. Rosenberg's opinion lacked

[16] In addition to also reviewing the evidence that Dr. Broudy reviewed, Dr. Rosenberg reviewed the Miner's treatment records and Dr. Broudy's report. MC Employer's Exhibit 5.

sufficient credibility.[17] *See Morrison*, 644 F.3d at 478; *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; Decision and Order at 30-31. Therefore, we affirm the ALJ's rejection of Employer's expert opinions and affirm his conclusion that Employer failed to disprove the existence of clinical pneumoconiosis. Decision and Order at 31.

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*, 25 BLR at 1-155 n.8. The Sixth Circuit holds Employer can "disprove the existence of legal pneumoconiosis by showing that [the miner's] coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal-dust exposure had no more than a *de minimis* impact on the miner's lung impairment." *Id*. at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

The ALJ rejected the opinions of Drs. Broudy and Rosenberg that the Miner's disabling blood gas impairment is due to IPF unrelated to coal dust exposure for the same reasons he discredited their opinions that the Miner did not have clinical pneumoconiosis. Decision and Order at 32. As Employer does not challenge these credibility determinations separate and apart from its challenge of the ALJ's findings as to clinical pneumoconiosis, we affirm them for the same reasons. Consequently, we affirm the ALJ's finding that Employer failed to disprove the existence of either clinical or legal pneumoconiosis and, thus, Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "no part of the [Claimant'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)(ii); Decision and Order at 33-34. The ALJ permissibly discredited the opinions of Drs. Broudy and Rosenberg on the cause of the Miner's pulmonary disability because they did not diagnose pneumoconiosis, contrary to

[17] Because Dr. Green diagnosed clinical pneumoconiosis, his opinion does not aid Employer in establishing its burden at rebuttal. MC Director's Exhibit 13. Therefore, we need not address Employer's assertion that Dr. Green's opinion is not well-reasoned. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 5.

the ALJ's finding that Employer failed to disprove the disease.[18] *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 33034. We therefore affirm the ALJ's conclusion that Employer did not rebut the Section 411 (c)(4) presumption by establishing that no part of the Miner's pulmonary disability is caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

Because we have affirmed the ALJ's findings that Claimant invoked the Section 411(c)(4) presumption and Employer did not rebut it, Claimant has established the Miner was entitled to benefits at the time of his death. 30 U.S.C. §921(c)(4) (2018). We therefore affirm the award of benefits.

Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to the award of benefits in the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits. 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; Decision and Order at 36-37; Employer's Brief at 7.

[18] Drs. Broudy and Rosenberg did not address whether pneumoconiosis caused the Miner's total respiratory disability independent of their conclusions that he did not have the disease.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits in the Miner's Claim and Decision and Order Awarding Benefits in the Survivor's Claim.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge