U.S. Department of Labor

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

BRB Nos. 17-0404 BLA
and 17-0405 BLA

BONNIE LEE OSBORNE (Widow of, and on behalf of, BOBBY J. OSBORNE)	)	
Claimant-Respondent	)	
v.	)	
WHITAKER COAL CORPORATION	)	DATE ISSUED: 07/31/2018
and	)	
SUN COAL COMPANY c/o HEALTHSMART CCS	)	
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 of William J. King, Administrative Law Judge, United States Department of Labor.

Ronald E. Gilbertson (Gilbertson Law, LLC), Columbia, Maryland, for employer/carrier.

Jennifer L. Feldman (Kate S. O'Scannlain, 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, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2015-BLA-05032, 2015-BLA-05033), rendered by Administrative Law Judge William J. King on a miner's subsequent claim and a survivor's claim, filed pursuant to provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] The administrative law judge credited the miner with seventeen years of coal mine employment and determined that he had a totally disabling respiratory or pulmonary impairment, invoking the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] He then found that employer did not

[1] The miner filed an initial claim for benefits on May 8, 1998, which was denied by the district director on September 18, 1998, because the miner did not establish any element of entitlement. Director's Exhibit 1. The miner filed a second claim for benefits on January 5, 2001, which was denied by the district director on April 12, 2001, because the miner did not establish a material change in condition. Director's Exhibit 2. The miner filed his third claim for benefits on October 3, 2002, which was denied by Administrative Law Judge Joseph E. Kane on March 14, 2006. Director's Exhibit 3. The Board subsequently affirmed the denial of benefits. *Osborne v. Whitaker Coal Corp.*, BRB Nos. 06-0539 BLA and 06-0539 BLA/A (Jan. 26, 2007) (unpub.). The miner then filed his current claim on August 5, 2013, but died on March 14, 2014, while his claim was pending. Director's Exhibits 5, 65. Claimant is the widow of the miner and is pursuing his claim on behalf of his estate. On May 9, 2014, she filed a claim for survivor's benefits. Director's Exhibit 63. The district director issued a proposed decision and order awarding benefits in each claim. Director's Exhibits 54, 70. Employer timely requested a hearing and both claims were transmitted to the Office of Administrative Law Judges on October 10, 2014. Director's Exhibits 55, 71, 77.

[2] Under Section 411(c)(4) of the Act, a miner's total disability is presumed to be due to pneumoconiosis if he had at least fifteen years of underground or substantially similar coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(b).

rebut the presumption, establishing a change in an applicable condition of entitlement at 20 C.F.R. §725.309. After considering all of the evidence, the administrative law judge awarded benefits in the miner's claim and found claimant derivatively entitled to survivor's benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012).[3]

On appeal, employer argues that the administrative law judge applied the wrong legal standards for rebutting the Section 411(c)(4) presumption and erroneously found that claimant established a change in an applicable condition of entitlement under 20 C.F.R. §725.309. Employer also argues the administrative law judge erred in determining that it did not rebut the presumed existence of legal pneumoconiosis or total disability causation in the miner's claim. Employer thus contends that the administrative law judge also erred in awarding benefits in the survivor's claim.[4] Claimant has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs (the Director), filed a limited brief, asserting that invoking the Section 411(c)(4) presumption can establish a change in an applicable condition of entitlement and that an administrative law judge's credibility findings in a prior claim do not control the weighing of evidence in the current

[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 having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2012); *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-200 (2010).

[4] Five months after filing its brief in support of the petition for review, employer argued for the first time that the manner in which Department of Labor administrative law judges are appointed may violate the Appointments Clause of the Constitution, Art. II § 2, cl. 2. Employer's Motion at 1-4. The Director, Office of Workers' Compensation Programs (the Director), responded that employer waived the argument by failing to raise it in its opening brief. Subsequent to the Supreme Court's decision in *Lucia v. SEC*, 585 U.S. , 2018 WL 3057893 (June 21, 2018), employer moved for remand of the claim for reassignment to a properly appointed administrative law judge. Employer's Supplemental Authority for Reassignment and New Hearing before the Office of Administrative Law Judges at 2. The Director again responded, urging the Board to deny employer's motion as waived. We agree with the Director. Because employer did not raise the Appointments Clause argument in its opening brief, it waived the issue. *See Lucia*, 585 U.S. at , 2018 WL 3057893 at *8 (requiring "a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party's] case"); s*ee also Williams v. Humphreys Enters., Inc.*, 19 BLR 1-111, 1-114 (1995); (the Board generally will not consider new issues raised by the petitioner after it has filed its brief identifying the issues to be considered on appeal. *Senick v. Keystone Coal Mining Co.*, 5 BLR 1-395, 1-398 (1982).

claim.[5] In its reply brief, employer clarified its position that the Section 411(c)(4) presumption can only be used to show a change in condition if the facts presumed are not rebutted.

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.[6] 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 Associates, Inc*., 380 U.S. 359 (1965).

I. Miner's Claim

A. Legal Standard in a Subsequent Claim Involving Section 411(c)(4)

When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that at least "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). The applicable conditions of entitlement are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3); *see White v. New White Coal Co*., 23 BLR 1-1, 1-3 (2004).

In this case, the miner's third claim for benefits, filed on October 3, 2002, was denied by Administrative Law Judge Joseph E. Kane on March 14, 2006, because although the miner established a totally disabling respiratory impairment and a change in an applicable condition of entitlement at 20 C.F.R. §725.309, he did not establish that he had pneumoconiosis. Director's Exhibit 3. The miner appealed and the Board affirmed the denial of benefits. *Osborne v. Whitaker Coal Corp*., BRB Nos. 06-0539 BLA and 06-0539 BLA/A (Jan. 26, 2007) (unpub.). The miner subsequently filed this current claim for benefits on August 5, 2013. Director's Exhibit 5. After weighing the evidence in this case, the administrative law judge found that because employer did not rebut the Section

[5] We affirm, as unchallenged on appeal, that the miner had seventeen years of coal mine employment; suffered from a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2); and invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 20-21.

[6] Because the miner's coal mine employment was in Kentucky, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 6.

411(c)(4) presumption that the miner's totally disabling respiratory impairment was caused by pneumoconiosis, claimant satisfied the requirement of establishing a condition of entitlement that previously defeated the miner's claim. Decision and Order at 27.

To the extent employer suggests that the Section 411(c)(4) presumption cannot establish a change in an applicable condition of entitlement,[7] we reject this assertion. Several courts have held that invocation of the Section 411(c)(4) presumption satisfies claimant's burden to demonstrate a change in an applicable condition of entitlement at 20 C.F.R. §725.309. *See, e.g., E. Assoc. Coal Corp. v. Director, OWCP* [*Toler*], 805 F.3d 502, 511-12, 25 BLR 2-743, 2-754-55 (4th Cir. 2015) (holding that the fifteen-year presumption may be used to establish a change in an applicable condition of entitlement at 20 C.F.R. §725.309, including the existence of pneumoconiosis); *Consolidation Coal Co. v. Director, OWCP* [*Bailey*], 721 F.3d 789, 794, 25 BLR 2-285, 2-292 (7th Cir. 2013). Consequently, as explained below, we affirm the administrative law judge's finding that "[c]laimant has established that [the miner] was totally disabled due to pneumoconiosis, a condition of entitlement that defeated [the miner's] previous claim." Decision and Order at 27.

We also reject employer's assertion that Judge Kane's findings with regard to his weighing of the medical evidence in the prior claim must be treated as the law of the case in this subsequent claim. When evaluating whether a change in an applicable condition of entitlement has been established, an administrative law judge is not bound by the credibility findings in a prior claim but rather should "consider only the new evidence to determine whether the element of entitlement previously found lacking is now present." *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 486, 25 BLR 2-135, 2-147 (6th Cir. 2012). After finding a change in condition has been established, the administrative law judge must weigh all of the evidence to determine if a claimant is entitled to benefits. In doing so, "no findings made in connection with the prior claim . . . will be binding on any party in the adjudication of the subsequent claim."[8] 20 C.F.R. §725.309. Consequently, the

[7] In its reply brief, employer states it is not arguing that invocation of the Section 411(c)(4) cannot establish a change in an applicable condition of entitlement at 20 C.F.R. §725.309. Rather, employer argues that when the rebuttal evidence, supporting that claimant does not have pneumoconiosis, is properly considered, it is clear that there was no change in the miner's medical condition.

[8] There are two exceptions to this regulatory provision but neither is relevant here: findings "based on a party's failure to contest an issue" and "any stipulation made by any party in connection with the prior claim" will be binding in the subsequent claim. 20 C.F.R. §725.309(c)(5).

administrative law judge did not err in weighing the evidence of record from claimant's prior claims and reaching his own credibility determinations.[9]

B. Rebuttal of the Presumption – Legal Pneumoconiosis

Once the Section 411(c)(4) presumption is invoked, the burden of proof shifts to employer to establish that the miner had neither legal nor clinical pneumoconiosis,[10] or 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." 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(d)(1)(i), (ii); *see Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1070, 25 BLR 2-431, 2-444 (6th Cir. 2013); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 479-80, 25 BLR 2-1, 2-8 (6th Cir. 2011). The administrative law judge found that employer rebutted the presumption that the miner had clinical pneumoconiosis, but failed to establish that the miner did not have legal pneumoconiosis or that it played no part in his totally disabling respiratory impairment.

As an initial matter, we reject employer's assertion that the administrative law judge applied an incorrect legal standard when considering rebuttal of the presumed fact of legal pneumoconiosis. Although the administrative law judge considered rebuttal of legal pneumoconiosis and total disability causation simultaneously, the administrative law judge stated the proper burden of proof for each. Decision and Order at 23-27. The administrative law judge recognized that in order to rebut the presumed existence of legal pneumoconiosis, employer must show that the miner did not suffer from a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure." Decision and Order at 23; *see also* 20 C.F.R. §§718.201(b), 718.305(d)(1)(i). Concerning rebuttal of total disability causation, the administrative law judge considered

[9] Notably, when Judge Kane considered the miner's 2002 subsequent claim, it was the miner's burden to affirmatively prove the existence of legal pneumoconiosis; in the current claim it is employer's burden to rebut the presumed existence of pneumoconiosis, due to invocation of the Section 411(c)(4) presumption.

[10] 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). This definition "includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." *Id*. 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).

whether employer established that no part of the miner's respiratory or pulmonary disability was caused by legal pneumoconiosis. Decision and Order at 23, *citing Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 662, 25 BLR 2-725, 2-731 (6th Cir. 2015); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 490, 25 BLR 2-633, 2-644 (6th Cir. 2014); *Minich v. Keystone Coal Min. Corp*., 25 BLR 1-151, 1-155 n. 8 (2015) (Boggs, J., concurring and dissenting). Consequently, we hold that the administrative law judge did not impose an improper burden on employer.

As indicated *supra*, in order to disprove the existence of legal pneumoconiosis, employer must show by a preponderance of the evidence that claimant does not have a chronic lung disease or impairment that is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b); *see Minich*, 25 BLR at 1-159. In support of rebuttal, employer submitted the medical opinions of Drs. Rosenberg and Castle, who reported that the miner had chronic obstructive pulmonary disease (COPD) and emphysema related solely to cigarette smoking. Director's Exhibit 15; Employer's Exhibits 3-5, 7, 14, 17. The administrative law judge determined that their opinions are inconsistent with the scientific evidence credited by the Department of Labor (DOL) in the preamble to the 2001 regulatory revisions and that they did not adequately explain why coal dust could not have also contributed to the miner's respiratory impairment. Decision and Order at 24-27. Then, considering the evidence as a whole, including the evidence considered by Administrative Law Judge Joseph E. Kane in his March 14, 2006 Decision and Order – Denying Benefits, the administrative law judge found that employer failed to disprove the existence of legal pneumoconiosis. *Id*. at 27-29.

There is no merit to employer's contention that the administrative law judge erred in finding the newly submitted opinions of Drs. Rosenberg and Castle insufficient to rebut the presumed existence of legal pneumoconiosis. Regarding the opinion of Dr. Rosenberg, the administrative law judge observed correctly that he eliminated coal dust exposure as a source of claimant's obstructive impairment based on the marked decrease in claimant's FEV1/FVC ratio.[11] Decision and Order at 24-25; Director's Exhibit 15; Employer's

[11] Dr. Rosenberg stated that:

> Specific to [the miner], one can appreciate that his FEV1 was significantly reduced to 18% predicted with a marked reduction of his FEV1/FVC ratio down to around 33% . . . . when coal mine dust exposure causes obstruction, the general pattern is that of a reduced FEV1 with a symmetrical reduction of the FVC, such that the FEV1/FVC ratio is preserved. That did not happen here. The exact opposite did, and the extreme decline in the miner's ratio

Exhibits 3, 7, 17. The administrative law judge rationally found that Dr. Rosenberg's premise – that coal dust exposure causes proportional decrements in FEV1 and FVC, thereby preserving the FEV1/FVC ratio – conflicts with the scientific evidence credited by the DOL in the preamble. *See Sterling*, 762 F.3d at 491, 25 BLR at 2-645; *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11 (6th Cir. 2012); Decision and Order at 25, *citing* 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000) (crediting studies showing that coal miners have an increased risk of developing chronic obstructive pulmonary disease, which "may be detected from decrements in certain measures of lung function, especially FEV1 and the ratio of FEV1/FVC."). In addition, the administrative law judge permissibly determined that Dr. Rosenberg's opinion is contrary to the regulations because Dr. Rosenberg excluded a contribution by coal dust on the basis that "chronic bronchitis should dissipate within months of the time that inhalational factors causing its presence have ceased to occur."[12] Director's Exhibit 15; *see* Employer's Exhibit 3 at 23; *see also* 20 C.F.R. §718.201(c); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 738, 25 BLR 2-675, 2-684-85 (6th Cir. 2014); *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 869 (D.C. Cir. 2002); 65 Fed. Reg. at 79,937-79,945, 79,968-79,977; Decision and Order at 25-26.

The administrative law judge also permissibly determined that Drs. Rosenberg and Castle did not sufficiently explain why coal dust could not have also contributed to the miner's respiratory impairment.[13] *See Kennard*, 790 F.3d at 668, 25 BLR at 2-740); *Jericol*

> down to 33% (preserved ratio 70% or higher) indicates that the obstruction is entirely related to cigarette smoking.

Director's Exhibit 15.

[12] The regulations state that pneumoconiosis "is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c)

[13] Dr. Rosenberg acknowledged that "[c]oal mine dust exposure can cause significant and disabling airflow obstruction" but concluded that the miner's "disease and decline are entirely consistent and classic for smoking-induced [chronic obstructive pulmonary disease]." Director's Exhibit 15. Dr. Castle stated that the miner "worked in or around the underground mining industry for a sufficient enough time to have developed coal workers' pneumoconiosis if he were a susceptible host" and identified several risk factors for the development of pulmonary disease, but concluded that the miner's respiratory impairment was due solely to the miner's cigarette smoking history. Employer's Exhibit 4.

Mining, Inc. v. Napier, 301 F.3d 703, 713-14, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-325-26 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); Decision and Order at 27. As the administrative law judge provided rational reasons for discrediting the opinions of Drs. Rosenberg and Castle, we affirm the administrative law judge's finding that the newly submitted medical opinion evidence was insufficient to rebut the presumed existence of legal pneumoconiosis.[14] *See Minich*, 25 BLR at 1-154-56; *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

The administrative law judge also considered the evidence from the miner's prior claims, including the opinions of Drs. Repsher and Rosenberg, which Judge Kane previously found established that the miner did not have legal pneumoconiosis. Employer generally asserts that the administrative law judge "improperly discounted the prior medical opinions of Drs. Rosenberg and Repsher on the issue of pneumoconiosis." Employer's Reply Brief at 10. However, we have rejected employer's argument that Judge Kane's findings concerning his weighing of the medical evidence in the prior claim must be treated as the law of the case. Thus, we affirm, as not specifically challenged, the administrative law judge's permissible finding that, weighing the evidence as a whole, including the evidence from the miner's prior claims, employer did not rebut the presumed existence of legal pneumoconiosis and, therefore, did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(i). *See* 20 C.F.R. §§802.211, 802.301; *Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-47-48 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Decision and Order at 27-29. Consequently, we also affirm the administrative law judge's determination that claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309.[15]

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[14] The administrative law judge also considered Dr. Baker's opinion that the miner had legal pneumoconiosis. Decision and Order at 24; Director's Exhibits 10, 48. However, as Dr. Baker's opinion does not aid employer in rebutting the presumption, we need not consider employer's contentions concerning the administrative law judge's weighing of his opinion. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

[15] We reject employer's assertion that the administrative law judge erred by failing to explain "how the miner's physical condition had deteriorated so as to demonstrate a change in condition under the Sixth Circuit's [*Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994) and *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 25 BLR 2-135 (6th Cir. 2012)] standard for claims under Section 725.309." Employer's Brief at 14. As the Sixth Circuit has held, an administrative law judge "need not compare the old and new evidence to determine a change in condition; rather, he will consider only the new

C. Rebuttal of the Presumption – Disability Causation

Pursuant to 20 C.F.R. §718.305(d)(1)(ii), the administrative law judge permissibly determined that the newly submitted opinions of Drs. Rosenberg and Castle are insufficient to establish that no part of the miner's totally disabling respiratory or pulmonary impairment was due to pneumoconiosis, based on the same reasoning he used to discredit their opinions concerning rebuttal of legal pneumoconiosis. *See Ogle*, 737 F.3d at 1074, 25 BLR at 2-452; *Island Creek Kentucky Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-474 (6th Cir. 2013); Decision and Order at 27, 29. The administrative law judge also rationally found, on the merits, that the evidence from the miner's prior claims is insufficient to rebut total disability causation. *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); Decision and Order at 27-29. Employer raises no separate allegations of error with respect to the administrative law judge's finding that employer failed to disprove the presumed causal relationship between claimant's total disability and legal pneumoconiosis. We therefore affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(ii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Consequently, we further affirm the administrative law judge's award of benefits in the miner's claim.

II. Survivor's Claim

After concluding that the miner was entitled to benefits, the administrative law judge correctly determined that claimant met the prerequisites for derivative entitlement to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*).[16] Decision and Order at 29; *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013). Because employer raises no specific challenge to the administrative law judge's findings at Section 422(*l*), we affirm the administrative law judge's award of survivor's benefits.[17] *See Skrack*, 6 BLR at 1-711.

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evidence to determine whether the element of entitlement previously found lacking is now present." *Banks*, 690 F.3d at 486, 25 BLR at 2-147.

[16] To establish entitlement under Section 422(*l*), claimant must prove: 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*).

[17] Based on our holding, it is not necessary to address employer's alternative argument that the administrative law judge's conclusory discussion is insufficient to

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

explain his determination that employer did not rebut the presumption of death causation at Section 411(c)(4).