U.S. Department of Labor

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

BRB No. 16-0075 BLA

DOROTHY L. BAUM (Widow of CLAIR BAUM) Claimant-Respondent v. EARTHMOVERS UNLIMITED, INCORPORATED Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 11/10/2016 DECISION and ORDER

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

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

James M. Poerio (Poerio & Walter, Inc.), Pittsburgh, Pennsylvania, for employer.

Rebecca J. Fiebig (M. Patricia Smith, Solicitor of Labor; Maia 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 appeals the Decision and Order Awarding Benefits (2014-BLA-5667) of Administrative Law Judge Drew A. Swank, rendered on a survivor's claim filed on October 18, 2013, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] The administrative law judge determined that employer was the properly designated responsible operator, and found that the miner worked for at least 15.99 years either in underground coal mine employment, or in coal mine employment in conditions substantially similar to those in an underground mine. The administrative law judge also found that the miner suffered from a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Based on these findings, and the filing date of the claim, the administrative law judge concluded that claimant invoked the rebuttable presumption that the miner's death was due to pneumoconiosis under Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4). The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges its designation as the responsible operator. In addition, employer argues the administrative law judge erred in finding that it failed to rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the administrative law judge's decision. The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's designation of employer as the responsible operator. With respect to the merits, however, the Director argues that remand is necessary, as the administrative law judge erred in weighing the evidence on rebuttal. Employer has filed a reply brief reiterating its

[1] Claimant is the surviving spouse of the miner, who died on March 28, 2013. Director's Exhibit 8.

[2] Under Section 411(c)(4), the miner's death is presumed to be due to pneumoconiosis if claimant establishes that the miner had at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and suffered from a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

position on the responsible operator issue.[3]

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

I. RESPONSIBLE OPERATOR

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner." 20 C.F.R. §725.495(a)(1). A coal mine operator is a "potentially liable operator" if it meets the criteria set forth at 20 C.F.R. §725.494(a)-(e).[5] Once a potentially liable operator has been properly identified by the Director, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits, or that another operator more recently employed the miner for at least one year and that operator is financially capable of assuming liability for benefits. *See* 20 C.F.R. §725.495(c).

The procedural background of this issue is as follows: On July 19, 2013, the district director issued a Notice of Claim to Benjamin Coal Company, informing it that it was identified as a "potentially liable operator." Director's Exhibit 11. On September

[3] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant invoked the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis, and that the preponderance of the autopsy evidence established that the miner suffered from clinical pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4-6, 12, 14-15.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because the miner's coal mine employment was in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 9; Director's Exhibits 3, 5.

[5] In order for a coal mine operator to meet the regulatory definition of a "potentially liable operator," the miner's disability or death must have arisen out of employment with the operator, the operator must have been in business after June 30, 1973, the operator must have employed the miner for a cumulative period of not less than one year, the employment must have occurred after December 31, 1969, and 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).

25, 2013, the district director also issued a Notice of Claim to employer, informing it that it was identified as a "potentially liable operator." Director's Exhibit 12. By separate letter to employer issued on the same day, the district director submitted additional questions regarding the nature of employer's business and its relationship with the miner. Director's Exhibit 14. Both companies were informed that "[w]ithin 30 days of receipt of this Notice of Claim, you (or your insurer) must file a response pursuant to 20 C.F.R. §725.408 indicating your intent to accept or contest your identification as a potentially liable operator." Director's Exhibits 11, 12. Neither company responded within thirty days.[6]

On January 8, 2014, the district director issued a Schedule for the Submission of Additional Evidence, indicating that employer received the Notice of Claim on September 27, 2013, but failed to timely respond. Director's Exhibit 15. Therefore, the district director advised employer that, pursuant to 20 C.F.R. §725.408(b)(2), it was precluded from submitting any documentary evidence relevant to its status as a potentially liable operator. *Id.* Furthermore, the district director identified employer as the responsible operator liable for benefits because it was the potentially liable operator that most recently employed the miner. *Id*.

On February 6, 2014, employer responded to both the Notice of Claim and to the Schedule for the Submission of Additional Evidence. Director's Exhibit 16. Employer agreed that it employed the miner, but denied that it was a potentially liable operator or responsible operator liable for payment of benefits. *Id*. Employer conceded that it received the Notice of Claim, but indicated that it "did not believe there was a need to respond, because [it has] never been involved in [its] history in a black lung claim" and therefore "put aside the notice and did not take any steps to review the details of it . . . ." *Id*. Furthermore, employer asserted that it "is not involved in operations as a coal [mine]" and that "none of [its] employees come into contact with coal or coal dust . . . ." *Id*. Employer acknowledged that it "should have contacted the claims examiner," but explained that it "was not in the coal mining business and had nothing to do with processing, extracting, preparing or transporting coal," and is primarily involved in mine reclamation work after coal mines have closed. *Id*. Therefore, employer asserted that the district director incorrectly determined that it employed the miner "as a miner for not less than one year." *Id*.

Thereafter, the district director sought additional information from employer on the nature of its mine reclamation work, which employer provided in letter responses.

[6] Benjamin Coal Company responded to its Notice of Claim on October 9, 2013, denying that it should be considered a potentially liable operator. Director's Exhibit 11.

Director's Exhibits 21-24. In its responses, employer reiterated that it did not employ the miner in coal mine employment. *Id*.

In a Proposed Decision and Order issued on April 11, 2014, the district director found that employer is "the coal mine operator designated as responsible for the payment of benefits . . . ." Director's Exhibit 25. On the same date, the district director notified Benjamin Coal Company that it was dismissed as the "putative responsible operator in this claim." Director's Exhibit 11. Employer requested a hearing, and the case was forwarded to the Office of Administrative Law Judges, and assigned to the administrative law judge.

Before the administrative law judge, employer moved for summary judgment, asserting that it should be dismissed as responsible operator because it did not employ the miner in coal mine employment. By Order dated May 29, 2015, the administrative law judge denied summary judgment, finding that, under 20 C.F.R. §725.408, employer waived its right to argue that it did not employ the miner in coal mine employment, because it failed to timely respond to the September 25, 2013 Notice of Claim. The administrative law judge reiterated that conclusion in his Decision and Order Awarding Benefits. Further, in his Decision and Order, the administrative law judge alternatively found that even if employer had timely responded, it was the responsible operator because the miner's work with employer in mine reclamation constituted coal mine employment under the Act.

On appeal, employer asserts that the district director initially erred in determining that it was a potentially liable operator. Specifically, employer contends that the September 25, 2013 letter from the district director that accompanied the Notice of Claim included several questions regarding employer's business and its relationship with the miner. Therefore, employer maintains that this letter establishes that the district director had no factual basis to send employer the Notice of Claim in the first instance.[7]

Contrary to employer's contention, the district director followed the procedures set forth in the regulations. When a claim is filed, the district director determines, based on employment information provided by the claimant, whether there is a potentially liable operator pursuant to 20 C.F.R. §725.494. The district director issues a Notice of Claim to each potentially liable operator he identifies, requesting that each operator either accept

[7] Specifically, employer maintains that, in this letter, the district director posed questions that "demonstrate inarguably that [the district director] was in possession of no evidence whatsoever to support a conclusion, or even an inference, that [employer] is a coal mine operator . . . ." Employer's Brief at 4.

or contest its liability for benefits. 20 C.F.R. §725.407(b), (c). In this case, the miner's Social Security Administration earnings records reflect employment with employer from 1990 to 1994. Director's Exhibit 5. Furthermore, pursuant to 20 C.F.R. §725.407(c), the "district director may request the operator to answer specific questions, including, but not limited to, questions related to the nature of its operations, [and] its relationship with the miner," upon issuing the Notice of Claim. Therefore, we see no error in the district director's decision to issue the Notice of Claim and seek additional information from employer pursuant to 20 C.F.R. §725.407(c).

Employer next argues that the district director failed to issue the Notice of Claim to its insurer, as required by 20 C.F.R. §725.407(b). Specifically, employer asserts that the district director should have determined that employer was insured by Rockwood Insurance Group, and sent a Notice of Claim to this insurer. We disagree. The applicable regulation sets forth that where the records maintained by the Director's office indicate that the operator obtained insurance for the payment of benefits, and the claim falls within such policy, notice shall also be sent to the operator's carrier. 20 C.F.R. §725.407(b). With respect to those records, the district director obtained the following "Statement Required by 20 C.F.R. §725.495(d)," signed by Kim R. Kasmeier:

> I am employed by the United States Department of Labor [(DOL)] in the Division of Coal Mine Workers' Compensation Branch of Standards, Regulations and Procedure (BSRP). BSRP maintains records of insurance and self-insurance information submitted to the Department under 20 C.F.R. Part 726. Those records allow BSRP to determine, based upon the last date of a miner's employment with a particular coal mine operator, whether the operator secured its liability for any benefits that might be payable to that miner or his or her survivors.

Director's Exhibit 13. Ms. Kasmeier indicated that she searched the relevant records for employer's name, based on the "Date of Last Employment of [Miner]" for the year 1994. *Id*. She stated that, "[b]ased on that search . . . the operator listed was not covered by a policy of federal black lung insurance, or approved to self-insure its liability, on the date on which the miner was last employed by that operator." *Id*. Because the district director conducted the search, as required by the regulations, we reject employer's contention that a Notice of Claim should have been issued to Rockwood Insurance Group.[8] *See* 20

[8] Employer later informed the district director that it found "information that an insurance policy was in effect for the period of March 1, 1993 through March 1, 1994, with [Rockwood Insurance Group] . . . ." Director's Exhibit 26. However, employer also submitted an e-mail from Rockwood Insurance Group indicating that this policy was canceled on May 25, 1993. Director's Exhibit 27. Contrary to employer's argument, the

C.F.R. §725.407(b).

Employer next argues that the district director and the administrative law judge had discretion to consider the evidence that employer submitted which, employer asserts, indicates that it did not employ the miner in coal mine employment.[9] Employer contends its argument is supported by the fact that the district director sought additional information from employer with respect to the nature of its business and mine reclamation. Employer maintains that the district director's "refusal to consider the evidence [it] solicited . . . constitutes an abuse of discretion and a denial to [employer] of due process." Employer's Brief at 15. Employer also contends that the "facts compel dismissing [employer] because there is no rational dispute that [employer] was not a coal mine operator or engaged in any activity integral to the operation of a coal mine." *Id*. at 16. Employer's arguments lack merit.

Employer concedes that it did not respond to the district director's September 25, 2013 Notice of Claim until February 6, 2014. Employer also concedes that it received the Notice of Claim, but "did not believe there was a need to respond" and "put aside the notice and did not take any steps to review the details of it . . . ." Director's Exhibit 16. The regulations applicable to this issue are clear. Section 725.408(a)(3) provides that an operator that receives a Notice of a Claim, and fails to file a response within thirty days of receipt, "shall not be allowed to contest its liability for the payment of benefits on any of the grounds set forth in paragraph (a)(2)." 20 C.F.R. §725.408(a)(3). The grounds specified in paragraph (a)(2) include that the operator "was an operator for any period after June 30, 1973," that the operator "employed the miner as a miner for a cumulative period of not less than one year," and that the "miner was exposed to coal mine dust

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district director was not obligated to inquire as to whether that cancellation was properly communicated to the Department of Labor. The district director need only research whether an insurance policy exists and whether the claim falls within such policy. *See* 20 C.F.R. §725.407(b).

[9] We reject employer's argument that the district director abused his discretion by dismissing Benjamin Coal Company, when Benjamin Coal Company also failed to timely respond. Employer's Brief at 14-15. The district director found that Benjamin Coal Company was a potentially liable operator under 20 C.F.R. §§725.494, 725.408(a)(3). Director's Exhibit 11. However, the district director correctly found that Benjamin Coal Company was not the potentially liable operator that most recently employed the miner, and therefore found it was not the putative responsible operator pursuant to 20 C.F.R. §725.495(a)(1). Director's Exhibits 15, 16.

while working for the operator . . . ." 20 C.F.R. §725.408(a)(2)(ii). As a consequence of its failure to timely respond to the Notice of Claim, employer was precluded from arguing that it was not a coal mine operator and did not employ the miner in coal mine employment. Contrary to employer's contentions, the regulations do not contemplate that the district director has authority to waive this thirty-day deadline[10] by seeking additional evidence with respect to the nature of employer's business.

Therefore, the district director and the administrative law judge correctly found that employer was precluded from submitting additional evidence relevant to the grounds specified in 20 C.F.R. §725.408(a)(2),[11] including whether employer was an operator, or employed the miner in coal mine employment. As these are the grounds employer relies upon to contest its designation as the responsible operator, we affirm the administrative law judge's determination that employer is the responsible operator.[12]

II. REBUTTAL OF THE SECTION 411(c)(4) PRESUMPTION

Because claimant invoked the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis, the burden of proof shifted to employer to rebut the presumption by establishing that the miner had neither legal[13] nor clinical[14]

[10] Furthermore, although an employer has ninety days from receipt of the Notice of Claim to submit documentary evidence in support of its position, "[n]o documentary evidence relevant to the grounds set forth in paragraph (a)(2) may be admitted in any further proceeding unless it is submitted within the time limits set forth in this section." 20 C.F.R. §725.408(b)(2).

[11] Employer contends that it "establish[ed] good cause for the late response" to the Notice of Claim. Employer's Brief at 16. The thirty-day deadline for responding to the Notice of Claim "may be extended, for good cause shown, by filing a request for an extension with the district director prior to the expiration of the time period." 20 C.F.R. §725.423. Employer did not request an extension before the expiration of the thirty days. Moreover, the regulations do not contemplate a post-deadline "good cause" exception to 20 C.F.R. §725.408(a)(3).

[12] Because we affirm the administrative law judge's responsible operator finding for the reasons stated above, we need not address employer's challenges to the administrative law judge's alternative finding that the miner's mine reclamation work with employer constituted coal mine employment. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988).

[13] Legal pneumoconiosis is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not

pneumoconiosis, or by establishing that "no part of the miner's death was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(2)(i),(ii); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-150 (2015) (Boggs, J., concurring and dissenting); *Copley v. Buffalo Mining Co.*, 25 BLR 1-81, 1-89 (2012). Applying his findings at 20 C.F.R. §718.202(a)(2), the administrative law judge determined that the preponderance of the autopsy evidence established that the miner suffered from clinical pneumoconiosis. Decision and Order at 12. With respect to the issue of legal pneumoconiosis, the administrative law judge found that Dr. Fino's opinion that the miner's disabling obstructive respiratory impairment was unrelated to coal dust exposure, was contrary to the preamble to the 2001 revised regulations. *Id*. at 16-17. Therefore, the administrative law judge found that employer was unable to establish rebuttal pursuant to 20 C.F.R. §718.305(d)(2)(i).

Under 20 C.F.R. §718.305(d)(2)(ii), the administrative law judge noted that employer relied on the opinions of Drs. Swedarsky and Fino to establish that no part of the miner's death was caused by pneumoconiosis.[15] Decision and Order at 16. The

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limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The regulation also provides that "a disease 'arising out of coal mine employment' 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).

[14] 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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment." 20 C.F.R. §718.201(a)(1).

[15] The administrative law judge summarized the death causation opinions of Drs. Swedarsky and Fino as follows:

> [Dr. Swedarsky] reviewed a number of the deceased miner's medical records and the autopsy slides. He diagnosed lung cancer and cited studies that demonstrate that there is no link between lung cancer and coal mine dust inhalation. [Dr. Swedarsky] concluded his report by stating that "[the

administrative law judge determined that the "evidence is undisputed in this case that the immediate cause of the miner's death was his lung cancer . . . ." Decision and Order at 17. However, the administrative law judge found that "[t]hat fact alone" was "insufficient to rebut the presumption contained at 20 C.F.R. §718.305 that the miner's death was at least substantially contributed to or hastened by coal workers' pneumoconiosis." *Id*. Therefore, the administrative law judge found that employer was unable to establish rebuttal pursuant to 20 C.F.R. §718.305(d)(2)(ii).

We have affirmed, as unchallenged, the administrative law judge's finding that the preponderance of the autopsy evidence established that the miner had clinical pneumoconiosis. *See* n.3, *supra*; Decision and Order at 12; Employer's Brief at 34. Therefore, employer is unable to rebut the presumption by establishing that the miner did not have pneumoconiosis, pursuant to 20 C.F.R. §718.305(d)(2)(i). With respect to whether employer established that the miner did not have legal pneumoconiosis, which is relevant to rebuttal under 20 C.F.R. §718.305(d)(2)(ii), both the Director and employer argue that the administrative law judge erred in weighing Dr. Fino's medical opinion. We agree.

The administrative law judge concluded that the "flaw with Dr. Fino's [opinion] is that [Dr. Fino] admits that the deceased miner had a disabling respiratory impairment due to emphysema and [chronic obstructive pulmonary disease,]" (COPD), but he "does not

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> miner] died as a consequence of stage IV, moderately differentiated adenocarcinoma of the lung which was a consequence of his cigarette smoking; in [his] opinion coal dust exposure did not significantly contribute to or hasten his death."
>
> After reviewing a variety of medical records, Dr. Fino opined that the deceased miner had a disabling respiratory impairment consistent with emphysema and [chronic obstructive pulmonary disease (COPD)]. Based upon the evidence he reviewed, Dr. Fino attributed the miner's death solely to his lung cancer; he cites a number of studies which demonstrate lung cancer is unrelated to coal mine dust. [Dr. Fino] concluded his report by stating that the miner's underlying COPD "did not cause, contribute to, or hasten his death" and that "there is no evidence that coal dust disease was a significant contributing or hastening cause of his disability."

Decision and Order at 16, *quoting* Employer's Exhibit 1 at 3-4 and Employer's Exhibit 2 at 11-12, 15-16.

attribute either of those to coal dust inhalation." Decision and Order at 16-17. The administrative law judge found that Dr. Fino's failure to attribute the miner's emphysema or COPD to coal dust inhalation was inconsistent with the preamble to the 2001 revised regulations.

In so finding, the administrative law judge began by accurately noting DOL's recognition in the preamble that coal mine dust can cause clinically significant obstructive lung disease even in the absence of x-ray evidence of clinical pneumoconiosis, and that COPD "includes three disease processes characterized by airway dysfunction: chronic bronchitis, emphysema and asthma." 65 Fed. Reg. 79,920, 79,939, 79,971 (Dec. 20, 2000); Decision and Order at 16-17. However, the administrative law judge erroneously concluded that the miner's COPD "according to the Preamble to the Regulations . . . is attributable to coal mine dust inhalation and constitutes legal coal workers' pneumoconiosis." Decision and Order at 17. Contrary to the administrative law judge's conclusion, whether a particular miner's COPD or emphysema arose out of dust exposure in coal mine employment must be determined on a case-by-case basis, in light of the administrative law judge's consideration of the evidence of record. *See* 65 Fed. Reg. at 79,938; *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 861, 23 BLR 2-124, 2-159 (D.C. Cir. 2002); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-16, 25 BLR 2-115, 2-129-32 (4th Cir. 2012).

Thus, the administrative law judge's reason for discrediting Dr. Fino's opinion is in error. Specifically, the administrative law judge failed to address Dr. Fino's rationale for opining that the miner did not have legal pneumoconiosis. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396-97, 22 BLR 2-386, 2-396 (3d Cir. 2002); *see also Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528, 21 BLR 2-323, 2-326 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997).

We also agree with employer that the administrative law judge erred in considering the opinions of Drs. Swedarsky and Fino with respect to whether no part of the miner's death was caused by clinical pneumoconiosis. Employer's Brief at 31-35. The administrative law judge accurately indicated that a physician who attributes the miner's death to lung cancer must affirmatively establish that no part of the miner's death was caused by pneumoconiosis. *See Bender*, 782 F.3d at 137; *Copley*, 25 BLR at 1-89; Decision and Order at 17. Drs. Swedarsky and Fino opined that the miner's coal dust exposure did not cause or contribute to his death from lung cancer. Employer's Exhibits 1, 2. In weighing their opinions, the administrative law judge erred by failing to address or analyze the underlying reasoning provided by each doctor. *See Balsavage*, 295 F.3d at 396-97, 22 BLR at 2-396; *see also Hicks*, 138 F.3d at 528, 21 BLR at 2-326; *Akers*, 131

F.3d at 441, 21 BLR at 2-275-76. Therefore, we must vacate the administrative law judge's determination that employer did not establish rebuttal under 20 C.F.R. §718.305(d)(2)(ii), and further vacate the award of benefits.

On remand, the administrative law judge must reconsider whether employer has rebutted the Section 411(c)(4) presumption. Although employer is unable to establish rebuttal under the first method, because employer failed to prove that the miner did not have clinical pneumoconiosis, the administrative law judge should consider nonetheless whether employer has established that the miner did not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i)(A), (B); *see Minich*, 25 BLR at 1-150. Performing the rebuttal analysis in the order set forth in the regulation satisfies the statutory mandate to consider all relevant evidence, and provides the necessary framework for considering whether employer established that "no part of the miner's death was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(2)(ii). *See Minich*, 25 BLR at 1-150.

Once the administrative law judge has rendered findings on the issue of legal pneumoconiosis, he must reconsider whether employer has rebutted the presumed fact of death causation at 20 C.F.R. §718.305(d)(2)(ii). Employer can do so by affirmatively establishing that "no part of the miner's death was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(2)(ii). In considering whether employer's evidence is sufficient to rebut the presumption, the administrative law judge must address whether the physicians' opinions are reasoned and documented, taking into consideration the physicians' explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Balsavage*, 295 F.3d at 396-97, 22 BLR at 2-396; *Hicks*, 138 F.3d at 528, 21 BLR at 2-326. In making his credibility determinations on remand, the administrative law judge must set forth his findings in detail, including the underlying rationale, as required by the Administrative Procedure Act.[16] *See Marx v. Director, OWCP*, 870 F.2d 114, 119, 12 BLR 2-199, 2-207 (3d Cir. 1989); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

[16] The Administrative Procedure Act provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge