U.S. Department of Labor

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

BRB Nos. 23-0275 BLA
and 23-0276 BLA

KATHY A. OWENS (o/b/o and Widow of GLOY WYMAN OWENS)	)	
Claimant-Respondent	)	
v.	)	
DRUMMOND COMPANY, INCORPORATED	)	DATE ISSUED: 04/18/2024
Self-Insured Employer-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeals of the Decision and Order Awarding Benefits and the Decision and Order Awarding Benefits Based on Automatic Entitlement of Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

John R. Jacobs and Paisley Newsome (Maples Tucker & Jacobs, LLC), Birmingham, Alabama, for Claimant.

Jeannie B. Walston and P. Andrew Laird, Jr. (Webster, Henry, Bradwell, Cohan, Speagle & DeShazo, P.C.), Birmingham, Alabama, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Awarding Benefits and Decision and Order Awarding Benefits Based on Automatic Entitlement (2021-BLA-05367, 2021-BLA-05939) 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 subsequent miner's claim filed on March 12, 2019,[2] and a survivor's claim filed on May 24, 2021.[3]

The ALJ found Claimant established the Miner had at least fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the presumption that the Miner was totally disabled due to pneumoconiosis at the time of his death pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[4] and, therefore, established a change in the applicable condition of entitlement.[5] 20 C.F.R.

[1] We refer to the ALJ's decision in the miner's claim as "MC" Decision and Order and her decision in the survivor's claim as "SC" Decision and Order.

[2] On February 2, 2017, the district director denied the Miner's most recent prior claim, filed on March 29, 2016, because he did not establish he had a totally disabling respiratory or pulmonary impairment. MC BH4DK-2016091 Director's Exhibits 2, 37.

[3] Claimant is the widow of the Miner, who died on May 8, 2021. Survivor's Claim (SC) Director's Exhibits 1, 12. She is pursuing the miner's claim on behalf of her husband's estate and her own survivor's claim. SC Director's Exhibit 28. The Benefits Review Board has consolidated these appeals for purposes of decision only. *Owens v. Drummond Co.*, BRB Nos. 23-0275 BLA and 23-0276 BLA (May 1, 2023) (Order) (unpub.).

[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 at the time of his death. 30 U.S.C. §92l(c)(4) (2018); 20 C.F.R. §718.305(b).

[5] When a miner files a claim for benefits more than one year after the final denial of a previous claim, 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

§725.309(c). The ALJ further found Employer did not rebut the presumption and thus awarded benefits in the miner's claim. In a separate decision in the survivor's claim, the ALJ found Claimant entitled to derivative benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[6]

On appeal, Employer initially argues the ALJ erred in excluding MC Employer's Exhibit 12 and in failing to address whether the Miner's grandson is a dependent for augmentation of benefits. On the merits, it asserts the ALJ erred in finding Claimant established that the Miner's surface coal mine employment occurred in conditions substantially similar to those in an underground mine and that he was totally disabled. It further argues the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), declined to file a substantive response brief.[7] Employer filed a reply brief reiterating its arguments.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decisions and Orders if they are rational, supported by substantial evidence, and in accordance with applicable law.[8] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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denying the prior claim became final." 20 C.F.R. §725.309(d); *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 previously failed to establish a totally disabling pulmonary or respiratory impairment, Claimant had to submit new evidence establishing total disability to obtain a review of the Miner's subsequent claim on the merits. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c); MC BH4DK-2016091 Director's Exhibit 37.

[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); *see Oak Grove Res., LLC v. Director, OWCP* [*Ferguson*], 920 F.3d 1283, 1291-92 (11th Cir. 2019).

[7] We affirm the ALJ's crediting of the Miner with twenty-nine years of coal mine employment as it is unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); MC Decision and Order at 10.

[8] This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit, as the Miner performed his coal mine employment in Alabama. *See*

Miner's Claim

Evidentiary Challenge

At the hearing, Employer proffered MC Employer's Exhibit 10, "Records from [the Miner's] Personnel File," and withdrew MC Employer's Exhibit 11, "Arbitration Hearing Transcript." Hearing Transcript at 7, 33-38. Earlier, Employer had identified MC Employer's Exhibit 12, "Select records from the [M]iner's Shoal Creek theft file with Drummond." Claimant objected to its admission, and the ALJ excluded it from the record, as well as a "culled down" version, due to their lack of relevance. November 11, 2021 Joint Prehearing Statement at 5; November 29, 2021 Claimant's Motion in Limine; Hearing Transcript at 38-48.

Contrary to Employer's contention, we see no error in that ruling. An ALJ exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-153 (1989) (en banc). Thus, a party seeking to overturn an ALJ's disposition of a procedural or evidentiary issue must establish the ALJ's action represented an abuse of discretion. *V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

A miner need not be totally disabled at the time he left coal mine employment to establish entitlement to benefits under the Act, nor has Claimant alleged the Miner was totally disabled at that time. Hearing Transcript at 43. The relevant issue in this case is whether the Miner had a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.305(b)(1)(iii). Even accepting Employer's assertion that MC Exhibit 12 and its "culled down" version show that the Miner attempted to overturn his October 2003 termination and return to his job, the ALJ permissibly found that evidence is not relevant to the issue of whether the Miner became totally disabled by the time of his death nearly eighteen years later in 2021. We thus affirm the ALJ's decision to exclude them from the record. *See Blake*, 24 BLR at 1-113; *Dempsey*, 23 BLR at 1-63; *Clark*, 12 BLR at 1-153; Hearing Transcript at 38-48.

Dependency

In the current miner's claim, the Miner indicated he had two dependents – his wife and grandson, who was almost age seventeen and a student. MC Director's Exhibit 4. The

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Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 5.

district director ruled the Miner's grandson did not meet the dependency criteria as "the necessary adoption decree has not been provided." MC Director's Exhibits 52 at 7.

Before the ALJ, the parties identified one of the contested issues as whether the grandson "is the alleged (and disputed) dependent son of the [M]iner and Claimant." November 11, 2021 Joint Prehearing Statement at 3. Claimant testified at the hearing that she and her husband had custody of him when he was younger but did not adopt him, and that he was nineteen years old at the time of the hearing, employed, and no longer in school. Hearing Transcript at 22-23. In her post-hearing brief, Claimant also stated that she was only claiming herself as the Miner's dependent.[9] Claimant's Posthearing Brief at 1, 2, 31. The ALJ found the Miner's wife was his only dependent for purposes of augmentation, relying on Claimant's testimony and statements in her post-hearing brief. MC Decision and Order at 2.

Employer asserts the ALJ erred in not addressing whether the Miner's grandson is a dependent for purposes of the augmentation of benefits, alleging that at some later time the grandson could go back to school and Claimant could attempt to augment benefits on his behalf. Employer's Brief at 8-10. Claimant responds that whether the grandson will qualify as a dependent at some future date is "a purely hypothetical proposition." Claimant's Brief at 4.

As Claimant specifically advised the ALJ that she is not seeking augmented benefits for her grandson in the Miner's claim or her survivor's claim, we reject Employer's assertion that remand is required, as the issue of the grandson's dependency is moot. *See* 20 C.F.R. §725.462 ("A party may, on the record, withdraw his or her controversion of any or all issues set for hearing"); MC Decision and Order at 2; Claimant's Posthearing Brief at 1, 2, 31; Claimant's Brief at 4. Even if Claimant at some later date sought to augment her benefits, she would have the burden of presenting evidence to show her grandson's dependency; thus, Employer has not shown how it has been prejudiced or that it is necessary to resolve this question based on the mere possibility that the grandson becomes a dependent in the future. 20 C.F.R. §§725.208, 725.209, 725.310. We therefore reject Employer's contention of error.

[9] In addition, Claimant identified only herself as the Miner's dependent in her survivor's claim, checking the "no" box to the question of whether she or the Miner had any dependent children either under the age of eighteen; age eighteen to twenty-three years old and attending school; or age eighteen or older and disabled. SC Director's Exhibit 1.

Miner's Claim - Invocation of the Section 411(c)(4) Presumption

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner worked at least fifteen years in qualifying coal mine employment and had a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

Qualifying Coal Mine Employment

The ALJ found that the Miner worked for twenty-nine years in coal mine employment. Qualifying coal mine employment for purposes of invoking the Section 411(c)(4) presumption is work in underground coal mines, or surface coal mines in conditions "substantially similar" to underground mines. 20 C.F.R. §718.305(b)(1)(i). The conditions in a surface mine are "substantially similar" to those underground if "the miner was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2).

Employer stipulated the Miner worked for it for nine years underground and the ALJ found he had an additional twenty months of aboveground work with Shoal Creek Mine from May 1992 to January 1994, which took place at an underground mine site. MC Decision and Order at 10-11; November 11, 2021 Joint Prehearing Statement at 3; MC Director's Exhibits 5, 8; Hearing Transcript at 19, 25; *see Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1058-59 (6th Cir. 2013); *Muncy v. Elkay Mining Co*., 25 BLR 1-21, 1-28-29 (2011) (miner who worked underground or aboveground at an underground mine site need not establish that his working conditions were substantially similar to those in an underground mine). We affirm the ALJ's finding that the Miner had twenty months of aboveground work with Shoal Creek Mine at an underground mine site as it is unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); MC Decision and Order at 10-11. Thus, we affirm the ALJ's finding that the Miner had ten years and eight months of underground coal mine employment.

The ALJ further found the remainder of the Miner's surface coal mine work was performed in conditions substantially similar to work in an underground mine. Specifically, the ALJ relied on the Miner's statements that he was exposed to coal dust in all of his coal mine work, and Claimant's testimony that the Miner was "always dirty" when he returned home from work, so much so that at times she could only see his teeth and eyes. MC Decision and Order at 11; MC BH4DK2005129 Director's Exhibit 1 at 100; MC BH4DK2016091 Director's Exhibit 3; MC Director's Exhibit 5; Hearing Transcript at 13-20, 24.

Employer argues the ALJ failed to sufficiently compare the dust conditions of the Miner's surface coal mine work to the dust conditions of his underground coal mine work. Employer's Brief at 5-8. We disagree.

Claimant is not required to prove the dust conditions aboveground were identical to those underground. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 664-65 (6th Cir. 2015); 78 Fed. Reg. 59,102, 59,105 (Sept. 25, 2013). Instead, she need only establish the Miner was "regularly exposed to coal-mine dust" while working at surface mines. 20 C.F.R. §718.305(b).

Here, the ALJ noted accurately that the Miner consistently attested on all of his applications for benefits that his coal mine employment regularly exposed him to dust. MC Decision and Order at 11. Further, the ALJ permissibly found the Miner's working conditions in surface coal mine employment were substantially similar to an underground mine based on Claimant's credible testimony that the Miner was "always dirty" when he returned home from his coal mine work and at times he was so dirty she could only see "his teeth and his eyes."[10] *Id.* at 10-11 (quoting Hearing Transcript at 13-20, 24); *see Zurich Am. Ins. Grp. v. Duncan*, 889 F.3d 293, 298 (6th Cir. 2018) (widow's testimony that her husband came home from work so covered in dust "you could only see the color of his eyes" and she had to wash his clothes "several times to even get them clean" supports a finding of regular dust exposure); *see also Bonner v. Apex Coal Corp.*, 25 BLR 1-279, 1-282-84 (Jan. 24, 2022), *recon. denied*, (May 24, 2022) (Order) (unpub.) (credible testimony 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). As it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established the Miner had at least fifteen years of qualifying coal mine employment.

Total Disability

A miner is considered to have been totally disabled if he had a pulmonary or respiratory impairment which, standing alone, prevented him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies, qualifying

[10] Claimant testified that during all of the Miner's surface coal mine employment, he returned home from work "very dirty" or "covered in dust," except with regard to his surface coal mine employment at Sayre, where she did not indicate the Miner's condition upon returning home from work. Hearing Transcript at 13-20, 24. Any error in the ALJ's inclusion of the time the Miner worked at Sayre as qualifying coal mine employment is harmless, given that the Miner worked there only two years. Thus, even if that time were deducted, the Miner still had twenty-seven years of qualifying coal mine employment, more than the fifteen years required to invoke the Section 411(c)(4) presumption. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); MC Director's Exhibit 5; Hearing Transcript at 15-16.

arterial blood gas studies,[11] 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 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).

Employer contends the ALJ erred in finding Claimant established total disability based on the medical opinions and in consideration of the evidence as a whole.[12] Employer's Brief at 11-27.

Medical Opinions

The ALJ considered three medical opinions relevant to total disability. 20 C.F.R. §718.204(b)(2)(iv); MC Decision and Order at 15-19. Dr. Barney opined the Miner had a respiratory impairment that precluded him from performing his usual coal mine employment, whereas Drs. Hasson and Rosenberg opined he was not totally disabled. MC Director's Exhibits 22, 26; MC Employer's Exhibits 5-6.

Employer first contends the ALJ erred in crediting Dr. Barney's opinion over the opinions of Drs. Hasson and Rosenberg because the latter physicians reviewed all the Miner's medical records and testimony whereas Dr. Barney did not. Employer's Brief at 25. We disagree. An ALJ is not required to discredit a physician who did not review all of a miner's medical records when the opinion is otherwise well-reasoned, documented, and based on his own examination of the miner, objective test results, and exposure histories. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984). Here, the ALJ permissibly credited

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

[12] The ALJ found Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii), as the three pulmonary function studies are non-qualifying, the preponderance of the arterial blood gas studies was non-qualifying, and there is no evidence of cor pulmonale with right-sided congestive heart failure. MC Decision and Order at 12-15. Moreover, as the record contains no evidence indicating the Miner had complicated pneumoconiosis, the ALJ concluded Claimant could not invoke the irrebuttable presumption at Section 411(c)(3) of the Act that the Miner was totally disabled due to pneumoconiosis. 30 U.S.C. § 921(c)(3); 20 C.F.R. §718.304.

Dr. Barney's opinion as he physically examined the miner, discussed the objective testing, and explained why the blood gas study results showing hypoxemia indicated the Miner was totally disabled. *See Church*, 20 BLR at 1-13; *Hess*, 7 BLR at 1-296; MC Decision and Order at 19; MC Director's Exhibits 22, 26; MC Employer's Exhibit 4.

Employer further alleges Dr. Barney did not have a thorough understanding of the exertional requirements of the Miner's usual coal mine work. Employer's Brief at 25. However, Dr. Barney reviewed documents describing the Miner's usual coal mine work and indicated that it required moderate to heavy exertion. MC Director's Exhibit 22 at 1. Thus, the ALJ permissibly found that Dr. Barney possessed an adequate understanding of the exertional requirements of the Miner's usual coal mine work. *Jericol Mining, Inc., v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); MC Decision and Order at 19; MC Director's Exhibit 22 at 1.

We also reject Employer's contention that the ALJ erred in crediting Dr. Barney's opinion to the extent he relied on non-qualifying objective studies. Non-qualifying studies can be evidence of total disability depending on the exertional requirements of a miner's coal mine work. 20 C.F.R. §718.204(b)(2)(iv); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744 (6th Cir. 1997); MC Director's Exhibits 22, 26; Employer's Brief at 25, 27. Thus, we affirm the ALJ's finding that Dr. Barney's opinion supports a finding of total disability.

Regarding the weight accorded Employer's physicians, we see no error in the ALJ's credibility determinations. The ALJ permissibly found that Dr. Hasson did not render a clear opinion as to whether the Miner was totally disabled from a pulmonary or respiratory impairment, irrespective of its cause. *See Johnson v. Apogee Coal Co.*, BLR , BRB No. 22-0022 BLA, slip op. at 10-11 (May 26, 2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023) (relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the miner had a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305); *see also Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989) (same); MC Decision and Order at 18 n.15; MC Employer's Exhibit 5 at 25.

The ALJ also permissibly found unpersuasive Dr. Rosenberg's opinion, that the Miner was not totally disabled because the Miner had improved oxygenation with exercise, because Dr. Rosenberg did not adequately account for the fact that the Miner's November 14, 2019 exercise blood gas study showed a decrease in oxygenation. *See Clark*, 12 BLR at 1-155; MC Decision and Order at 19; MC Employer's Exhibit 6 at 11. Moreover, the ALJ permissibly found Dr. Rosenberg failed to sufficiently explain how the Miner could

have performed the heavy exertional labor required of his usual coal mine job given his mild resting hypoxemia. *See Cornett,* 227 F.3d at 577; MC Decision and Order 19; MC Employer's Exhibit 6.

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See U.S. Steel Mining Co. v. Director, OWCP* [*Jones*], 386 F.3d 977, 992 (11th Cir. 2004) (duty of the ALJ to evaluate and explain what weight is given to the evidence); *Bradberry v. Director, OWCP*, 117 F.3d 1361, 1367 (11th Cir. 1997) (ALJ is responsible for making credibility determinations and for weighing conflicting evidence). Employer's arguments amount to a request to reweigh the evidence, which the Board may not do. *See Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989). We therefore affirm the ALJ's finding that Claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv).

Weighing of the Evidence as a Whole

Employer contends the ALJ should have given more weight to the Miner's hospital and treatment records because they do not include any references to the Miner being totally disabled. Employer's Brief at 4-5, 27-31. We disagree.

The ALJ permissibly concluded that while the Miner's hospitalization and treatment records do not support a finding of total disability, they also do not undermine Dr. Barney's opinion that the Miner was totally disabled. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984) (ALJ has discretion to determine the weight to accord medical evidence that is silent on a miner's condition); MC Decision and Order at 19-22; MC Claimant's Exhibits 2-4; MC Employer's Exhibits 7-9, 13, 15, 16. Further, although Employer points to other respiratory conditions to account for the Miner's impairment, Employer conflates the distinct and separate issues of total disability and disability causation. *See* 20 C.F.R §718.204(b)(2), (c); *Johnson*, BLR , BRB No. 22-0022 BLA, slip op. at 10-11; *see also Bosco*, 892 F.2d at 1480-81.

We therefore affirm, as supported by substantial evidence, the ALJ's finding Claimant established the Miner had a totally disabling respiratory or pulmonary impairment.[13] 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; MC Decision and Order at 22.

[13] Employer argues the ALJ erred by failing to consider the Miner's application for Social Security Disability Insurance (SSDI) and its accompanying medical documentation which do not identify the Miner as having respiratory or pulmonary problems in 2010, when he filed his application. Employer's Brief at 4-5. Any error in the ALJ's failure to consider the Miner's SSDI records is harmless as they document his condition in 2010 and

Consequently, we affirm the ALJ's conclusion that Claimant invoked the Section 411(c)(4) presumption and established a change in the applicable condition of entitlement.[14] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §§718.305, 725.309; *see E. Associated Coal Corp. v. Director, OWCP* [*Toler*], 805 F.3d 502, 511-12 (4th Cir. 2015) (fifteen-year presumption may be used to establish a change in the applicable condition of entitlement at 20 C.F.R. §725.309); *Consolidation Coal Co. v. Director, OWCP* [*Bailey*], 721 F.3d 789, 794 (7th Cir. 2013) (same); MC Decision and Order at 22.

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[15] 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 establish rebuttal by either method.[16]

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not in 2021 when he died. *See Larioni*, 6 BLR at 1-1278. The relevant inquiry at 20 C.F.R. §718.305(b)(1)(iii) is whether Claimant established the Miner had, at the time of his death, a totally disabling respiratory or pulmonary impairment.

[14] We therefore reject Employer's argument that the ALJ erred in finding Claimant established a change in the applicable condition of entitlement. Employer's Brief at 10-11.

[15] "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).

[16] As the ALJ found Employer disproved clinical pneumoconiosis, we need not consider its contentions regarding the computed tomography scan evidence. 20 C.F.R. §718.305(d)(1)(i)(B); *see Larioni*, 6 BLR at 1-1278; MC Decision and Order at 20-21, 25; Employer's Brief at 31-33; MC Employer's Exhibit 13.

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." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on the opinions of Drs. Hasson and Rosenberg to establish that the Miner did not have legal pneumoconiosis. MC Decision and Order at 25-28; MC Employer's Exhibits 5-6. Dr. Hasson diagnosed the Miner with a "mild restriction" based on the pulmonary function test results and opined it "could be explained by [the Miner's] body habitus, elevation of right hemi-diaphragm, and his heart disease." MC Employer's Exhibit 5 at 25. The ALJ permissibly gave little weight to Dr. Hasson's opinion because he did not provide "compelling reasons" as to why the Miner's twenty-nine years of coal mine dust exposure did not also contribute to his respiratory impairment. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); MC Decision and Order at 10, 26; MC Employer's Exhibit 5 at 22, 25.

Dr. Rosenberg excluded a diagnosis of legal pneumoconiosis because the Miner had no respiratory symptoms when he left his coal mine employment and latent and progressive legal pneumoconiosis is "rare." MC Employer's Exhibit 6 at 11-12. The ALJ permissibly gave little weight to Dr. Rosenberg's opinion because he did not explain why the Miner could not have been one of those "rare" miners who developed legal pneumoconiosis after the cessation of his coal mine work, particularly in light of his insignificant smoking history and the regulations' recognition of pneumoconiosis "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); *Mullins Coal Co. of Virginia v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 738 (6th Cir. 2014); MC Decision and Order at 27; MC Employer's Exhibit 6 at 11-12.

Because the ALJ acted within her discretion in rejecting the opinions of Drs. Hasson and Rosenberg, the only opinions supportive of Employer's burden on rebuttal, we affirm her determination that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A). Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis. Therefore, we affirm the ALJ's conclusion 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 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); MC Decision and Order at 28.

The ALJ rationally discredited the disability causation opinions of Drs. Hasson and Rosenberg because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the existence of the disease. *See Oak Grove Res., LLC v. Director, OWCP* [*Ferguson*], 920 F.3d 1283, 1289 (11th Cir. 2019); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); MC Decision and Order at 28.

We therefore affirm the ALJ's finding that Employer failed to establish no part of the Miner's respiratory or pulmonary total disability was caused by legal pneumoconiosis, 20 C.F.R. §718.305(d)(1)(ii), and the award of benefits in the miner's claim.

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 in the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*) of the Act.[17] 30 U.S.C. §932(*l*) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); SC Decision and Order at 2-3.

[17] Employer asserts the ALJ erred in stating that the Miner died due to natural causes when his death certificate indicates he died from intracranial lesions with no mention of respiratory or pulmonary issues. Employer's Brief at 5 (citing Decision and Order at 2 and Employer's Exhibit 14). But any error in this regard is harmless. *See Larioni*, 6 BLR at 1-1278. The ALJ awarded benefits in the miner's claim having found Claimant invoked the Section 411(c)(4) presumption by establishing more than fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment, and Employer did not rebut the presumption, findings which we have affirmed. Consequently, the ALJ properly concluded that Claimant is entitled to benefits under Section 422(*l*) and therefore was not required to determine whether Claimant proved the Miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b).

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits and the Decision and Order Awarding Benefits Based on Automatic Entitlement.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge