U.S. Department of Labor

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

BRB Nos. 19-0128 BLA
and 19-0129 BLA

TRENA TAYLOR (o/b/o and Survivor of RUSH TAYLOR	)	
Claimant-Petitioner	)	
v.	)	
HAWKINS COAL COMPANY	)	
and	)	DATE ISSUED: 05/27/2020
LIBERTY MUTUAL INSURANCE GROUP	)	
Employer/Carrier- Respondents	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Modification of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Trena Taylor, Elkhorn City, Kentucky.

William A. Lyons (Lewis and Lewis Law Offices), Hazard, Kentucky, for employer/carrier.

Before: BUZZARD, ROLFE, and GRESH, Administrative Appeals Judges:

PER CURIAM:

Claimant[1] appeals, without the assistance of counsel,[2] the Decision and Order Denying Benefits on Modification (2017-BLA-05258 and 2017-BLA-05259) of Administrative Law Judge Steven D. Bell rendered on claims filed pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2012) (the Act). This case involves claimant's request for modification of the denial of the miner's subsequent claim filed on February 24, 2010, and the denial of her survivor's claim filed on October 24, 2012.

In a Decision and Order Denying Benefits issued on February 25, 2016, Administrative Law Judge Larry W. Price found the miner had at least twenty-five years of surface coal mine employment in conditions substantially similar to those in an underground mine and the new evidence establishes a totally disabling respiratory or pulmonary impairment.[3] Director's Exhibit 119. He therefore found claimant invoked the

[1] Claimant, the miner's widow, is pursuing his claim as well as her survivor's claim. This is the miner's second claim. On July 14, 1997, the district director denied the miner's first claim, filed on March 31, 1997, because he did not have a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1. Following a series of modification requests, the district director finally denied benefits on December 23, 2008. *Id*. The miner filed his current claim on February 24, 2010. Director's Exhibit 3. After the district director awarded benefits in the miner's current claim, *id.,* employer requested a formal hearing and the case was transferred to the Office of Administrative Law Judges (OALJ) for adjudication. Director's Exhibit 34. While his claim was pending at the OALJ the miner died on September 13, 2012. Director's Exhibits 39, 49, 50, 84. Claimant filed a survivor's claim on October 24, 2012. Director's Exhibit 48. After the district director awarded survivor's benefits and employer's subsequent request for a hearing, the district director consolidated both claims and forwarded the case to the OALJ. Director's Exhibits 52, 59, 60, 61.

[2] Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested on claimant's behalf that the Board review the administrative law judge's decision, but Ms. Combs is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.,* 19 BLR 1-88 (1995) (Order).

[3] Where 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 "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); *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."

presumption the miner was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act.[4] 30 U.S.C. §921(c)(4) (2012). He further found employer rebutted the presumption by establishing the absence of clinical and legal pneumoconiosis, and denied benefits in the miner's claim. *Id.*

Having found the miner not entitled to benefits, Judge Price also found claimant is not automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012).[5] He additionally found claimant precluded from an award of survivor's benefits because the evidence established the miner did not have pneumoconiosis. Claimant timely filed a request for modification on April 16, 2016. Director's Exhibit 120. Following the district director's denial of benefits, the case was referred to the Office of Administrative Law Judges and assigned to Administrative Law Judge Steven D. Bell (the administrative law judge). Director's Exhibit 123. Both claimant and employer submitted new evidence to the administrative law judge. Claimant's Exhibit 1; Employer's Exhibit 26.

In the Decision and Order Denying Benefits on Modification that is the subject of this appeal, the administrative law judge found claimant failed to establish a mistake in fact in Judge Price's prior denials of the miner's and survivor's claims. Accordingly, he denied benefits in both claims.[6]

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20 C.F.R. §725.309(c)(3). Because the miner's prior claim was denied because he did not establish total disability, Director's Exhibit 1, claimant met her burden under 20 C.F.R. §725.309(c)(3) by establishing that element of entitlement.

[4] Section 411(c)(4) of the Act presumes a miner was totally disabled due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[5] 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 the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2012).

[6] Judge Bell (the administrative law judge) did not identify any mistake in the prior determinations that the miner had at least twenty-five years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment and, therefore, claimant invoked the Section 411(c)(4) presumption in both the miner's and survivor's claims. Decision and Order on Modification at 6, 9. He further found no mistake in the prior determinations that employer disproved the existence of clinical and legal

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer and its carrier (employer) respond in support of the denial. The Director, Office of Workers' Compensation Programs, declined to file a substantive response to claimant's appeal.

In an appeal filed without the assistance of counsel, the Board considers whether substantial evidence supports the decision below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176, 1-177 (1989). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law.[7] 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).

In a miner's claim, the administrative law judge may grant modification based on either a change in conditions or a mistake in a determination of fact. 20 C.F.R. §725.310(a). The sole ground for modification in a survivor's claim is that a mistake in a determination of fact was made in the prior decision. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989). When a request for modification is filed, "any mistake may be corrected [by the administrative law judge], including the ultimate issue of benefits eligibility." *Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 497 (4th Cir. 1999); *see Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230 (6th Cir. 1994); *Jessee v. Director, OWCP*, 5 F.3d 723, 725 (4th Cir. 1993); *Nataloni v. Director, OWCP*, 17 BLR 1-82, 1-84 (1993).

I. THE MINER'S CLAIM

B. 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[8] or that "no

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pneumoconiosis and thus rebutted the Section 411(c)(4) presumption in both claims. *Id.* at 11.

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

[8] Clinical pneumoconiosis is defined as "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

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 administrative law judge found employer rebutted the presumption by disproving legal and clinical pneumoconiosis.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, employer must establish the miner did not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015) (Boggs, J., concurring and dissenting). The United States Court of Appeals for the Sixth Circuit holds an employer may rebut legal pneumoconiosis by showing that the miner's "coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). The "in part" standard requires employer to show that coal mine dust exposure "had at most only a *de minimis* effect on [the miner's] lung impairment." *Id.* at 407.

The parties previously submitted the opinions of Drs. Alam, Al-Khasawneh, Kaur, Fino, and Broudy. Dr. Alam diagnosed legal pneumoconiosis in the form of a severe restrictive impairment, chronic obstructive pulmonary disease (COPD), chronic bronchitis and hypoxemia, due in significant part to coal mine dust exposure. Claimant's Exhibit 9. Dr. Al-Khasawneh similarly diagnosed legal pneumoconiosis in the form of severe restriction, hypoxemia and hypercapnia due to coal mine dust exposure. Director's Exhibit 13. Dr. Kaur noted the miner had severe restrictive lung disease and a positive x-ray, and diagnosed "simple pneumoconiosis" but did not specify whether he was diagnosing clinical pneumoconiosis or legal pneumoconiosis. Claimant's Exhibit 8. Dr. Fino opined the miner did not have legal pneumoconiosis, but had a restrictive defect and hypoxemia due to obesity and congestive heart failure. Director's Exhibit 15; Employer's Exhibits 9-12. Dr. Broudy similarly opined the miner had a severe restrictive defect, severe hypoxemia and chronic bronchitis, due to cardiac disease and obesity. Employer's Exhibits 8, 13-15. The administrative law judge noted Judge Price discredited the opinions of Drs. Alam, Al-Khasawneh, and Kaur as inadequately explained, and credited the opinions of Drs. Fino

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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). "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).

and Broudy as well-reasoned to conclude employer disproved the existence of legal pneumoconiosis.[9] Decision and Order on Modification at 10-11.

The administrative law judge then considered the new medical opinions of Drs. Alam, Ford and Rosenberg submitted on modification. Dr. Alam again diagnosed legal pneumoconiosis and Dr. Ford stated the miner suffered from "black lung disease." Claimant's Exhibits 1, 2. In contrast, Dr. Rosenberg opined the miner did not have a "primary" pulmonary disorder but had a severe restrictive impairment and gas exchange abnormality due to obesity, congestive heart failure and recurrent pneumonia. Employer's Exhibit 26. The administrative law judge rejected the opinions of Drs. Alam and Ford as inadequately explained, and credited Dr. Rosenberg's opinion as well-reasoned and supported by the objective evidence to determine the new medical evidence did not establish a basis for modification. Decision and Order on Modification at 10. He then concluded, "[c]onsidering the newly submitted medical evidence, in conjunction with the evidence before Judge Price, I find no mistake of fact in Judge Price's conclusion that . . . [the miner] did not have [legal] pneumoconiosis." *Id.* at 11.

After review of the administrative law judge's Decision and Order on Modification, we vacate the denial of benefits and remand the claims for reconsideration of claimant's request for modification. In crediting Dr. Rosenberg's new opinion on modification, the administrative law judge did not satisfy the Administrative Procedure Act,[10] 5 U.S.C.

[9] The administrative law judge noted Judge Price rejected Dr. Alam's diagnoses of chronic obstructive pulmonary disease (COPD) and chronic bronchitis as not adequately explained and supported by the miner's hospitalization and treatment records. 2016 Decision and Order at 20; Claimant's Exhibit 9. Judge Price also found Dr. Alam did not address the miner's significant heart disease or obesity, and the impact those conditions had on his shortness of breath, COPD, and pulmonary function study results. *Id*. Judge Price further rejected Dr. Al-Khasawneh's opinion the miner had legal pneumoconiosis based on a severe restrictive pattern as he did not address the miner's heart disease, obesity, or the nature of his lung disease. 2016 Decision and Order at 21; Claimant's Exhibit 13. Similarly, he rejected Dr. Kaur's opinion for failure to discuss the effects of the miner's heart condition on his ability to breathe. In contrast, Judge Price found Dr. Fino's and Dr. Broudy's opinions well-documented and reasoned as they thoroughly considered the miner's entire medical and social histories, symptoms, testing, and examinations. Decision and Order at 9-10, *summarizing* 2016 Decision and Order at 21; Employer's Exhibits 9, 12-15.

[10] The Administrative Procedure Act provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis

§557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by merely summarizing Dr. Rosenberg's opinion and summarily concluding it is entitled to "considerable weight." Decision and Order at 8, 10-11. Further, in crediting Dr. Rosenberg's conclusion the miner did not have a "primary" pulmonary disorder but has a significant restrictive impairment and gas exchange abnormalities related to obesity, congestive heart failure and recurrent pneumonia, the administrative law judge did not consider whether Dr. Rosenberg credibly disproved legal pneumoconiosis. Decision and Order on Modification at 10-11. Legal pneumoconiosis is present when coal dust significantly contributes to or substantially aggravates a respiratory condition, even if it is not the main or sole etiology. *See* 20 C.F.R. §718.201(b); *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 323 (4th Cir. 2013) (recognizing the Act does not require coal mine dust exposure to be the sole cause of a miner's respiratory impairment); *Cornett v. Benham Coal, Inc*., 227 F.3d 569, 576 (6th Cir. 2000). The administrative law judge failed to address whether Dr. Rosenberg credibly explained why the miner's obesity, congestive heart failure and recurrent pneumonia were the sole causes of the miner's restrictive and blood gas impairment, and why his twenty-five years of coal mine dust exposure did not also contribute to, or substantially aggravate, his impairments. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668 (6th Cir. 2015); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Cornett*, 227 F.3d at 578; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983).

Nor has the administrative law judge adequately explained his agreement with Judge Price on the previously submitted evidence. The administrative law judge simply acknowledged Judge Price's conclusion that Drs. Fino and Broudy are "well-reasoned" and stated without explanation that there was "no mistake of fact" in that determination. Decision and Order at 11. But review of Judge Price's decision reveals he conducted an insufficient analysis. For example, in attributing the miner's impairment entirely to cardiomyopathy with chronic congestive heart failure, Dr. Broudy stated if coal mine dust had caused such a severe restrictive defect he would expect to see changes on the miner's x-rays due to coal workers' pneumoconiosis. Employer's Exhibit 8. Neither Judge Price nor Judge Bell addressed whether Dr. Broudy's reasoning conflicts with the regulatory provision that clinical pneumoconiosis and legal pneumoconiosis are distinct diseases, and the absence of clinical pneumoconiosis does not preclude the existence of legal pneumoconiosis. *See* 20 C.F.R. §718.201(a))(1), (2); *see* 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000) ("Decrements in lung function associated with exposure to coal mine dust are severe enough to be disabling in some miners, whether or not [clinical] pneumoconiosis

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therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

is also present."). Further, neither Judge Price nor Judge Bell addressed whether Dr. Fino credibly explained why the miner's twenty-five years of coal mine dust exposure did not also contribute to, or substantially aggravate, his impairments. 20 C.F.R. §§718.201(a)(2),(b), 718.305(d)(1)(i)(A).

In reviewing the record on modification, "[t]he fact-finder has the authority, if not the duty, to rethink prior findings of fact and to reconsider all evidence for any mistake in fact . . . ." *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 743 (6th Cir. 1997), *citing Worrell*, 27 F.3d at 230. Specifically, the administrative law judge must determine whether the medical evidence, old and new, is sufficient to rebut the Section 411(c)(4) presumption in accordance with the proper standards the Sixth Circuit articulated: whether employer affirmatively established the miner's coal mine dust exposure "did not contribute, in part, to his alleged pneumoconiosis." *Young*, 947 F.3d at 405. As such, an opinion that simply states other conditions (*e.g.*, obesity, heart disease, and pneumonia) could account for the miner's disabling restrictive gas exchange or other impairments does not meet this burden. *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007).

Because the administrative law judge did not critically analyze the bases for the physicians' opinions that the miner's coal mine dust exposure did not contribute to his disabling impairment, we must vacate the administrative law judge's determination claimant failed to establish a mistake in a determination of fact in Judge Price's finding that employer disproved the existence of legal pneumoconiosis. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *see also* 20 C.F.R. §§718.201(a)(2), 718.202(b). Therefore, we also vacate his finding employer rebutted the Section 411(c)(4) presumption by disproving the existence of pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Decision and Order on Modification at 11.

On remand, the administrative law judge must reconsider whether the prior decision contained a mistake of fact. The administrative law judge must weigh both the previously submitted evidence and the evidence proffered with claimant's request for modification, render a finding in the context of Section 411(c)(4) rebuttal, and provide a rationale for his conclusions. *See Hunt*, 124 F.3d at 743; *Worrell*, 27 F.3d at 230; *see also Wojtowicz*, 12 BLR at 1-165.

Clinical Pneumoconiosis

The administrative law judge reviewed Judge Price's weighing of the previously submitted x-ray evidence. Decision and Order on Modification at 9-10. No new x-ray readings were submitted on modification. Judge Price considered eleven interpretations of five x-rays dated February 26, 2009, April 13, 2009, June 23, 2010, February 10, 2011, and March 8, 2011. 2016 Decision and Order at 3-4. He determined the readings of the

February 26, 2009, June 23, 2010, February 10, 2011, and March 8, 2011 x-rays are in equipoise as one dually-qualified radiologist read each x-ray as negative or positive for pneumoconiosis. *Id*. at 19. He further determined the readings of the April 13, 2009 x-ray are preponderantly negative as two dually-qualified radiologists read it as negative and one dually-qualified radiologist read it as positive for pneumoconiosis. *Id*. Therefore, Judge Price found the x-ray evidence preponderantly negative for clinical pneumoconiosis. *Id*. The administrative law judge reviewed Judge Price's findings and found no mistake in fact in his determination that the preponderance of the x-ray evidence is negative for pneumoconiosis. As this finding is supported by substantial evidence, it is affirmed.[11] *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order on Modification at 10.

The administrative law judge also noted Judge Price determined the biopsy evidence weighed against a finding of pneumoconiosis as the bronchial washings and biopsy reports were not positive for pneumoconiosis, and there was no indication of any anthracotic pigment or anthrasilicosis.[12] Decision and Order on Modification at 9.

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge noted Judge Price considered the opinions of Drs. Fino, Broudy, Alam, and Kaur.[13] Judge Price found Dr. Fino's and Dr. Broudy's opinions the miner did not have clinical pneumoconiosis well-

[11] The administrative law judge did not disturb Judge Price's finding that the computed tomography (CT) scans the parties submitted are not probative as neither party produced evidence they are medically acceptable to demonstrate the presence or absence of pneumoconiosis. Decision and Order on Modification at 9.

[12] Judge Bell accepted Judge Price's finding that, although not conclusive, the biopsy evidence weighed against a finding of clinical pneumoconiosis. Decision and Order on Modification at 9. This was error as inconclusive evidence does not affirmatively establish the absence of pneumoconiosis. *See* 20 C.F.R. §§718.305(d)(2)(i)(B), 718.106(c); *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting). A remand is not required on this basis, however, given the administrative law judge's ultimate determination that the weight of the credible x-ray and medical opinion evidence is negative for the existence of clinical pneumoconiosis. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order on Modification at 10-11.

[13] Dr. Al-Khasawneh did not render an opinion on clinical pneumoconiosis. Director's Exhibit 13.

documented and reasoned, and consistent with the weight of the objective evidence. 2016 Decision and Order at 21; Employer's Exhibits 9, 12-15. Judge Price acknowledged Dr. Alam treated the miner,[14] but found his opinion the miner had clinical pneumoconiosis based on an x-ray and biopsy evidence not well-documented and reasoned. 2016 Decision and Order at 20; Claimant's Exhibit 9. He also rejected Dr. Kaur's opinion the miner had "simple pneumoconiosis" as he neither differentiated between clinical or legal pneumoconiosis nor specifically explained his conclusion. 2016 Decision and Order at 21; Claimant's Exhibit 8. Further, he found the miner's treatment records do not contain a reasoned opinion the miner had clinical pneumoconiosis. 2016 Decision and Order at 21; Claimant's Exhibit 12. Judge Price therefore found employer disproved clinical pneumoconiosis.

Turning to the new medical opinion evidence, the administrative law judge permissibly rejected Dr. Alam's opinion the miner had simple coal workers' pneumoconiosis as it is unclear what x-rays he "personally" reviewed, and the weight of the x-ray evidence is preponderantly negative. Decision and Order at 10; *see Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). Further, while Dr. Alam relied, in part, on a biopsy report "show[ing] positive for deposition of anthrasilicosis," the only biopsy evidence of record does not contain such a reference. *See Napier*, 301 F.3d at 713-714; *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986) (administrative law judge may assign less weight to physician's opinion that reflects an incomplete picture of miner's health); Decision and Order on Modification at 10; Employer's Exhibit 16.

The administrative law judge also permissibly found Dr. Ford offered no rationale or support for her conclusory statement the miner had "black lung disease." Decision and Order at 10; *see Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255. Noting Dr. Rosenberg reviewed the miner's medical records and considered his x-

[14] In weighing the medical evidence, the adjudicator "must give consideration to the relationship between the miner and any treating physician whose report is admitted into the record." 20 C.F.R. §718.104(d). Specifically, the adjudicator shall take into consideration the nature of the relationship, duration of the relationship, frequency of treatment, and extent of treatment. 20 C.F.R. §718.104(d)(1)-(4). Although the treatment relationship may constitute substantial evidence in support of the adjudicator's decision to give that physician's opinion controlling weight in appropriate cases, the weight accorded "shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5).

rays, CT scans, and other serious medical conditions, the administrative law judge permissibly found Dr. Rosenberg's opinion the miner did not have clinical pneumoconiosis well-reasoned and supported by the objective evidence. Decision and Order at 10; *see Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255. We affirm as supported by substantial evidence the administrative law judge's finding that the new and old evidence did not establish a mistake in Judge Price's prior determination employer disproved the existence of clinical pneumoconiosis. *See Martin*, 400 F.3d at 305; Decision and Order on Modification at 11.

II. SURVIVOR'S CLAIM

Because claimant invoked the Section 411(c)(4) presumption in the survivor's claim, the burden shifted to employer to establish the miner had neither legal nor clinical pneumoconiosis, or "no part of the miner's death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(i), (ii). Relying on his determinations that employer disproved both legal and clinical pneumoconiosis in the miner's claim, the administrative law judge found employer also rebutted the presumption in the survivor's claim. 20 C.F.R. §718.305(d)(2)(i); Decision and Order on Modification at 11. He further found because claimant failed to establish a mistake in the prior denial of benefits in the miner's claim, she was not automatically entitled to survivor's benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. §932(*l*). Decision and Order on Modification at 11.

Because we have vacated the finding that employer disproved the existence of legal pneumoconiosis and the denial of benefits in the miner's claim, we must also vacate his determination that employer successfully rebutted the Section 411(c)(4) presumption in the survivor's claim. On remand, if the administrative law judge awards benefits in the miner's claim, claimant is automatically entitled to benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. §932(*l*). If the administrative law judge finds employer successfully disproves the existence of legal pneumoconiosis, benefits are precluded in the survivor's claim. If, however, the administrative law judge finds employer fails to disprove the existence of legal pneumoconiosis he must determine whether employer rebutted the Section 411(c)(4) presumption with credible proof that "no part" of the miner's death was due to pneumoconiosis.

Accordingly, the administrative law judge's Decision and Order Denying Benefits on Modification is affirmed in part, vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge