

BRB No. 06-0650 BLA

KATHERINE M. PECHATSKO)	
(Widow of NICK PECHATSKO))	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED: 04/30/2007
)	
U.S. STEEL MINING COMPANY)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order on Remand-Awarding Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Debra L. Henry, Greensburg, Pennsylvania, for claimant.

Christopher Pierson (Burns, White & Hickton), Pittsburgh, Pennsylvania, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand-Awarding Benefits (03-BLA-6208) of Administrative Law Judge Daniel L. Leland on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). This case is before the Board for the second time. In the administrative law judge's initial Decision and Order, he noted employer's stipulation to twenty years of coal mine employment and that the miner suffered from pneumoconiosis arising out of coal mine employment. Decision and Order [2005] at 2; Hearing Transcript at 5. The administrative law judge found the evidence

sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2). Accordingly, the administrative law judge awarded benefits.

Upon review of employer's appeal, the Board held that the administrative law judge erred in finding that Dr. Biundo's opinion corroborated Dr. Green's opinion that pneumoconiosis contributed to the miner's death, because the administrative law judge did not explain why Dr. Biundo's opinion was entitled to deference based on his status as the miner's treating physician. In addition, the Board held that, because the administrative law judge did not consider all of the evidence regarding Dr. Oesterling's expertise and experience in the field of occupational lung disease, the administrative law judge erred in finding that Dr. Green's opinion outweighed Dr. Oesterling's contrary opinion, based on Dr. Green's qualifications. *Pechatsko v. U.S. Steel Mining Co.*, BRB No. 05-0473 BLA (Jan. 19, 2006)(unpub.).

On remand, the administrative law judge again found that the evidence established that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer asserts that the administrative law judge erred by failing to explain why the opinion of Dr. Biundo is entitled to greater weight. Employer also contends that the administrative law judge erred by failing to adequately consider Dr. Oesterling's credentials. Claimant¹ responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has not submitted a brief in this appeal.

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

Benefits are payable on a survivor's claim filed on or after January 1, 1982 only when the miner's death was due to pneumoconiosis.² See 20 C.F.R. §§718.1, 718.205(c);

¹ Claimant is the widow of the miner. The miner died on October 9, 2001. Director's Exhibits 3, 10. Claimant filed her survivor's claim on August 21, 2002. Director's Exhibit 3.

² Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or

Neeley v. Director, OWCP, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

After consideration of the administrative law judge's findings on remand, the arguments raised on appeal, and the evidence of record, we hold that the administrative law judge's findings are supported by substantial evidence.³ On remand, the administrative law judge considered Dr. Oesterling's documented qualifications and his testimony regarding his experience and expertise, compared these to Dr. Green's qualifications, and rendered reasonable findings based on this evidence.⁴ Decision and Order on Remand at 3. Thus, we affirm the administrative law judge's discretionary finding that Dr. Green's "extensive knowledge" and "expertise and experience in occupational lung disease," made "his opinion more credible than Dr. Oesterling's opinion." See *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211, 22 BLR 2-467, 2-481 (3d Cir. 2002); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113, 1-114 (1988); Decision and Order on Remand at 3. Moreover, in view of the administrative law judge's reliance on Dr. Green's opinion, employer does not explain how error, if any, by the administrative law judge in also according weight to Dr. Biundo's opinion affects the disposition of this case. See *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

(2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or

(3) Where the presumption set forth at §718.304 is applicable.

...

(5) Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death.

20 C.F.R. §718.205(c).

³ Three medical opinions are at issue in this appeal. Dr. Oesterling opined that the miner's very mild form of coal workers' pneumoconiosis was insufficient to have been a factor in his demise. Employer's Exhibit 2. Dr. Green opined that coal mine dust exposure and pneumoconiosis directly contributed to the miner's death. Claimant's Exhibits 1, 4. Dr. Biundo opined that pneumoconiosis significantly contributed to the miner's death. Director's Exhibit 14.

⁴ The record contains Dr. Green's curriculum vitae. Claimant's Exhibit 2. The record also contains Dr. Oesterling's curriculum vitae, as well as his testimony regarding his recent experience and expertise. Employer's Exhibit 2.

The administrative law judge found only that Dr. Biundo’s opinion “corroborate[d] the opinion of Dr. Green that pneumoconiosis substantially contributed to the miner’s death.” Decision and Order at Remand at 2. We therefore reject employer’s contentions, and affirm the administrative law judge’s finding pursuant to Section 718.205(c).

Accordingly, the administrative law judge’s Decision and Order on Remand—Awarding Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge