BRB Nos. 09-0295 BLA
and 09-0593 BLA

MURIEL CUNDIFF (Widow of and on behalf of JERRY CUNDIFF)	)	
Claimant-Respondent	)	
v.	)	
PEABODY COAL COMPANY	)	DATE ISSUED: 01/28/2010
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 – Awarding Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Brent Yonts (Brent Yonts, PSC), Greenville, Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (2005-BLA-05931 and 2005-BLA-5932) of Administrative Law Judge Thomas F. Phalen, Jr., rendered on a miner's subsequent claim and 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).[1] In a Decision and Order dated December 16, 2008, the administrative law judge accepted the parties' stipulation to thirty-seven years of coal mine employment, and adjudicated both claims pursuant to 20 C.F.R. Part 718. With respect to the miner's subsequent claim, the administrative law judge determined that the newly submitted medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. The administrative law judge also found that the evidence established that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203, and that the miner was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2)(iv), (c). With respect to the survivor's claim, the administrative law judge found that the evidence was sufficient to establish that pneumoconiosis substantially contributed to, and/or hastened, the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits in both the miner's and the survivor's claims.

On appeal, employer contends that the administrative law judge's finding of pneumoconiosis is not supported by substantial evidence. Employer contends that the administrative law judge applied an incorrect standard and gave impermissible reasons for resolving the conflict in the medical opinions pursuant to 20 C.F.R. §718.202(a)(4). Employer also challenges the administrative law judge's findings that the miner was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §§718.204(b), (c), and that his death was hastened by pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers'

[1] Claimant is the widow of Jerry Cundiff, the deceased miner. Director's Exhibit 34. The miner initially filed an application for benefits on November 28, 1988, which was denied by the district director on May 18, 1989, because the evidence was insufficient to establish any of the requisite elements of entitlement. Director's Exhibit 1. The miner took no further action with regard to this claim. *Id*. The miner filed his subsequent claim on September 10, 2001. Director's Exhibit 3. The district director denied benefits on February 6, 2003, on the ground that the evidence failed to establish total disability. Director's Exhibit 24. The miner requested a hearing. Director's Exhibit 26. While the case was pending with the Office of Administrative Law Judges (OALJ), the miner died on May 3, 2004. Director's Exhibit 34. The miner's claim was returned to the district director for consolidation with claimant's survivor's claim, filed on July 6, 2004. Director's Exhibits 34, 37. The district director awarded benefits on the survivor's claim on February 25, 2005. Director's Exhibit 64. Employer timely requested a hearing in the survivor's claim, and the consolidated claims were returned to the OALJ for a hearing, which was held on May 23, 2007. Director's Exhibits 65, 70, 71. The administrative law judge issued a Decision and Order awarding benefits on December 16, 2008, which is the subject of this appeal.

Compensation Programs, has not filed a response brief.[2] Employer has filed a reply brief, reiterating its contentions on 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.[3] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

A. The Miner's Subsequent Claim

In order to establish entitlement to benefits in a miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, that he was totally disabled and that his disability was due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "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(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(d)(2). In this case, the miner's prior claim was denied because the evidence was insufficient to establish the existence of pneumoconiosis arising out of coal mine employment or that the miner was totally disabled by pneumoconiosis. Director's Exhibit 1. Therefore, claimant had to submit new evidence establishing at least one of the requisite elements of entitlement in order to have the administrative law judge review the miner's subsequent claim on the merits. *See White*, 23 BLR at 1-3.

[2] We affirm, as unchallenged by the parties on appeal, the administrative law judge's findings of thirty-seven years of coal mine employment, that claimant did not establish the existence of simple or complicated pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3), or total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[3] 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 Exhibit 38.

Employer challenges the administrative law judge's finding that the evidence established the existence of pneumoconiosis and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §§718.202(a)(4), 725.309. Employer specifically contends that "after finding that the x-rays did not establish the existence of the disease in its clinical form (either simple or complicated)," the administrative law judge erred in failing to assess, pursuant to 20 C.F.R. §718.202(a)(4), whether the physicians' opinions diagnosing pneumoconiosis were merely restatements of x-ray readings. Employer's Brief in Support of Petition for Review at 16. Employer also challenges the weight accorded to the opinions of Drs. Branscomb and Caffrey. *Id*. Employer's arguments have merit.

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge noted that, although the various treatment records listed pneumoconiosis within the diagnosed conditions, the treatments records, "in and of themselves do not constitute a reasoned and documented finding of pneumoconiosis." Decision and Order at 23. The administrative law judge further noted that the miner's death certificate did not list pneumoconiosis or specify that the miner's chronic obstructive pulmonary disease (COPD) was due to coal dust exposure. Therefore, the administrative law judge acknowledged that the crux of the case rested on the relative weight he accorded the conflicting opinions of Drs. Fino, O'Bryan and Hardison, who diagnosed pneumoconiosis, in comparison to Drs. Branscomb, Repsher and Caffrey, who did not diagnosis the disease.[4]

The administrative law judge noted that Dr. Fino diagnosed simple coal workers' pneumoconiosis and a mild obstructive abnormality, the latter of which Dr. Fino could not exclude as being caused by coal dust inhalation. Employer's Exhibit 2. The administrative law judge found that Dr. O'Bryan diagnosed pneumoconiosis by x-ray, but concluded that the miner did not suffer from COPD. Employer's Exhibit 5. Finally, the administrative law judge found that Dr. Hardison diagnosed severe interstitial lung disease consistent with pneumoconiosis and COPD caused by coal dust exposure. Claimant's Exhibit 3; Director's Exhibit 49. In weighing the medical opinions, the administrative law judge noted that Drs. Fino and O'Bryan are Board-certified pulmonary specialists, while Dr. Hardison is Board-certified in internal medicine and was the miner's "longstanding treating physician." Decision and Order at 23-24. He found their

[4] The administrative law judge gave less weight to Dr. Simpao's opinion, that the miner had pneumoconiosis, because he found that Dr. Simpao lacked the expertise of the other physicians, relied on a highly questionable x-ray, and provided only a cursory analysis for his medical conclusions. Decision and Order at 24. We affirm the administrative law judge's credibility finding with respect to Dr. Simpao as it has not been challenged by the parties. *Skrack,* 6 BLR at 1-711.

"findings of pneumoconiosis" to be "reasoned and documented" and entitled to controlling weight. *Id*. at 23-24.

The administrative law judge found that Dr. Branscomb opined that the miner had no clinical or legal coal workers' pneumoconiosis. Employer's Exhibit 1. Moreover, the administrative law judge noted that Dr. Repsher concluded that the miner had no radiographic evidence of coal workers' pneumoconiosis. Director's Exhibit 63. In addition, Dr. Repsher opined that the miner suffered from mild to moderate COPD, but that there was no evidence that the COPD or any other pulmonary or respiratory disease was caused or aggravated by the miner's coal mine dust exposure. *Id.* The administrative law judge found that Dr. Caffrey concluded that there was no objective evidence to diagnose clinical pneumoconiosis. Director's Exhibit 62. Dr. Caffrey also noted that the miner was diagnosed with COPD in 2003, but opined that there is no objective evidence to diagnose legal pneumoconiosis. *Id*. In weighing these medical opinions, the administrative law judge noted that Drs. Branscomb and Repsher are Board-certified pulmonary specialists, and Dr. Caffrey is a Board-certified pathologist. Moreover, the administrative law judge found that the opinions of Drs. Branscomb, Repsher and Caffrey were reasoned and documented, but less persuasive than the opinions of Drs. Fino, O'Bryan and Hardison and therefore, that claimant established the existence of pneumoconiosis. Decision and Order at 23-24.

Employer contends that the administrative law judge erred in relying on the opinions of Drs. Fino, O'Bryan and Hardison to support a finding of legal pneumoconiosis under 20 C.F.R. §718.202(a)(4). Employer asserts that the administrative law judge "confused" the issues of clinical and legal pneumoconiosis.[5] Employer's Brief in Support of Petition for Review at 16. Employer notes that Dr. Fino diagnosed pneumoconiosis based solely on his consideration of the miner's x-rays. *Id*. Employer further contends that Dr. Fino's statement: "[a]ssuming that coal workers'

[5] Pursuant to 20 C.F.R. §718.201, the definition of pneumoconiosis includes both "clinical" and "legal" pneumoconiosis. "Clinical pneumoconiosis" consists of those diseases recognized by the medical community as pneumoconiosis, *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). 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. *Id.* "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). This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment. *Id.*

pneumoconiosis is present [radiographically], I *can not exclude* coal dust exposure as causing the mild obstruction," is not affirmative proof of legal pneumoconiosis. *Id*., *citing* Employer's Exhibit 2. With respect to Dr. O'Bryan's opinion, employer notes that, while the doctor diagnosed that the miner had radiographic evidence for pneumoconiosis, with the possibility of idiopathic pulmonary fibrosis, he specifically opined that the miner did not have an obstructive respiratory condition due to coal dust exposure. Employer's Brief in Support of Petition for Review at 17. Finally, employer contends that the administrative law judge erred in according Dr. Hardison's opinion controlling weight, based on his status as the miner's treating physician, without assessing whether Dr. Hardison's diagnosis of pneumoconiosis is a reasoned and documented opinion.

Initially, we are unable to discern from the administrative law judge's analysis of the opinions of Drs. Fino, O'Bryan and Hardison at 20 C.F.R. §718.202(a)(4), whether he found that claimant established the existence of clinical pneumoconiosis, or legal pneumoconiosis, or both. Therefore, the administrative law judge's Decision and Order does not satisfy the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), which requires that an administrative law judge provide an explanation for all of his findings of fact and conclusions of law. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Employer is correct that the administrative law judge erred in failing to consider whether Drs. Fino and O'Bryan based their diagnoses of pneumoconiosis solely on the positive x-ray evidence and the miner's history of coal mine employment. *See Cornett v. Benham Coal, Inc*., 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). We also agree that the administrative law judge failed to explain, as required by the APA, the basis for his summary finding that Dr. Hardison provided a reasoned diagnosis of pneumoconiosis. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 834, 22 BLR 2-320, 2-326 (6th Cir. 2002); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Wojtowicz*, 12 BLR at 1-162; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*).

We also agree with employer that the administrative law judge failed to explain why Dr. Branscomb's opinion, that the miner did not have COPD or a respiratory impairment caused by coal dust exposure, was undermined by his acknowledgment that "the increased interstitial marking [found on x-ray] may constitute evidence of early [coal workers' pneumoconiosis]." Decision and Order at 24; *see Wojtowicz*, 12 BLR at 1-162. As noted by employer, because the administrative law judge specifically found that the x-ray evidence was inconclusive, it is not rational to discredit Dr. Branscomb's opinion because he acknowledged a fact "consistent with the [administrative law judge's] credibility finding when it came to the x-rays." Employer's Brief in Support of Petition for Review at 19; *see Clark*, 12 BLR at 1-151. Thus, we vacate the administrative law judge's finding that claimant established the existence of pneumoconiosis pursuant to 20

C.F.R. §718.202(a)(4).[6] We further vacate the administrative law judge's finding that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.

Employer also contends that the administrative law judge erred in finding that the miner was totally disabled. Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge noted that only Drs. Simpao and Hardison diagnosed that the miner was totally disabled, whereas Drs. Fino, Branscomb and O'Bryan opined that the miner did not suffer from a totally disabling respiratory or pulmonary impairment. Specifically, the administrative law judge noted that Dr. Hardison opined that the miner "suffered from a totally disabling respiratory impairment due to a combination of his pulmonary problems and heart conditions." Decision and Order at 26.

The administrative law judge discredited Dr. Simpao's opinion, but accorded controlling weight to Dr. Hardison's diagnosis of total disability. After discussing the factors set forth at 20 C.F.R. §718.104(d),[7] the administrative law judge found that Dr.

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[6] We reject employer's contention that the administrative law judge erred in according Dr. Repsher's opinion less weight at 20 C.F.R. §718.202(a)(4). Although Dr. Repsher opined that the miner's pulmonary disease was due to his lengthy smoking history, the administrative law judge permissibly found that Dr. Repsher failed to explain his opinion in light of the fact that the miner's "coal mine history was at least as long as his cigarette smoking history." Decision and Order at 24; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); Director's Exhibit 63. Additionally, the administrative law judge permissibly accorded "little weight" to Dr. Caffrey's opinion on the existence of pneumoconiosis because Dr. Caffrey's relevant expertise in pathology is "not explained in terms of the fact that the record does not contain biopsy or autopsy evidence." Decision and Order at 24; *see Gray v. SLC Coal Co.*, 176 F.3d 382, 21 BLR 2-615 (6th Cir. 1999); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); Director's Exhibit 62.

[7] The administrative law judge noted that:

> In weighing the medical evidence of record relevant to whether the miner suffers, or suffered, from pneumoconiosis, whether the pneumoconiosis arose out of coal mine employment, and whether the miner is, or was, totally disabled by pneumoconiosis or died due to pneumoconiosis, the adjudication officer must give consideration to the relationship between the miner and any treating physician whose report is admitted into the record. Specifically the adjudication officer shall take into consideration the following factors in weighing the opinion of the miner's treating physician:

Hardison treated the miner for multiple conditions, including respiratory and pulmonary conditions, and that he had "superior understanding of the [m]iner's condition, particularly in the period immediately preceding the [m]iner's death." Decision and Order at 27. The administrative law judge found Dr. Hardison's disability opinion to be buttressed by the fact that the miner was on oxygen, that the miner's worsening condition was established by the treatment records and that his "disabling condition was also consistent with [claimant's] credible testimony at the formal hearing." *Id*. Lastly, the administrative law judge noted that the miner's non-qualifying pulmonary function and arterial blood gas studies were not performed during the last year of the miner's life, and while Dr. O'Bryan, the miner's consulting pulmonary physician, did not diagnose total disability, he "acknowledged that he would defer to the opinion of the [m]iner's treating physician" on this issue. *Id*. The administrative law judge concluded that, despite the non-qualifying pulmonary function and arterial blood gas studies, Dr. Hardison's opinion was sufficient to establish that the miner was totally disabled. *Id*.

We agree with employer that the administrative law judge erred in crediting Dr. Hardison's opinion under 20 C.F.R. §718.204(b)(2)(iv), based on his status as the miner's treating physician, without considering whether he found that the miner suffered from a pulmonary or respiratory impairment which, standing alone, would have prevented the miner from performing the exertional requirements of his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1); *Cornett*, 227 F.3d at 578, 22 BLR at 2-124. The administrative law judge may give additional weight to the opinion of a treating physician "provided that the weight given to the opinion . . . shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation . . . ." *See* 20 C.F.R. §718.104(d)(5); *Williams*, 338 F.3d at 501, 22 BLR at 2-625; *Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003). Because the administrative law judge has not specifically addressed whether Dr. Hardison provided a reasoned diagnosis of total respiratory disability, we vacate his findings pursuant to 20 C.F.R. §718.204(b)(2)(iv). Therefore, we instruct the administrative law judge, on remand, to determine whether Dr. Hardison's opinion is adequately reasoned and documented to carry claimant's burden of establishing total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

> (1) nature of relationship . . . ; (2) duration of relationship . . . ; (3) frequency of treatment . . . ; and (4) extent of treatment . . . ." 20 C.F.R. §718.104(d)(1)-(4).

Decision and Order at 26-27, *citing* 20 C.F.R. §718.104(d).

Employer also contends that the administrative law judge erred in finding that the miner was totally disabled due to pneumoconiosis under 20 C.F.R. §718.204(c). On the issue of disability causation, the administrative law judge credited Dr. Hardison's opinion that pneumoconiosis contributed, at least in part, to the miner's total disability, and gave less weight to "all of the remaining physicians' opinions . . . by their failure to either diagnose pneumoconiosis or find the presence of a totally disabling pulmonary or respiratory impairment." Decision and Order at 28. To the extent that the administrative law judge's credibility findings under 20 C.F.R. §718.202(a)(4) influenced his findings on the issue of disability causation, and because we vacate the administrative law judge's findings at 20 C.F.R. §718.204(b), we vacate the administrative law judge's determination that claimant satisfied her burden to establish that the miner's total disability was due to pneumoconiosis under 20 C.F.R. §718.204(c). Decision and Order at 27-28. Thus, we vacate the award of benefits on the miner's claim and remand this case for further consideration.

B. The Survivor's Claim

Employer also contends that the administrative law judge erred in finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). In order to be entitled to survivor's benefits, a claimant must demonstrate by a preponderance of the evidence that the deceased miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner's death, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis or if the presumption relating to complicated pneumoconiosis, set forth in 20 C.F.R. §718.304, is applicable. *See* 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. *See* 20 C.F.R. §718.205(c)(5); *Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-116 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993).

Pursuant to 20 C.F.R. §718.205(c), the administrative law judge found that "only Dr. Hardison opined that the [m]iner's pneumoconiosis contributed to and/or hastened the [m]iner's death." Decision and Order at 28. Drs. Repsher and Caffrey opined that the miner's death was due to his heart condition, and not a respiratory condition. Director's Exhibits 62, 63. Dr. O'Bryan stated that the miner's death was mostly likely due to heart failure but indicated that he would defer to the opinion of Dr. Hardison on this issue. Employer's Exhibit 5; Claimant's Exhibit 4.

The administrative law judge gave less weight to the opinions of Drs. Repsher and Caffrey, on the issue of whether pneumoconiosis hastened the miner's death, because neither physician had diagnosed pneumoconiosis. The administrative law judge further stated that he credited the opinion of Dr. Hardison for the reasons "outlined above," which appear to reference his findings on the issues of the existence of pneumoconiosis and total disability in the miner's claim. Decision and Order at 28. Therefore, the administrative law judge found that claimant established that the miner's death was due to pneumoconiosis.

Because we have vacated the administrative law judge's findings with respect to the issue of the existence of pneumoconiosis, we are unable to affirm his finding that that the miner's death was hastened by pneumoconiosis under 20 C.F.R. §718.205(c). We also agree with employer that the administrative law judge erred in crediting Dr. Hardison's opinion, based on his status as the miner's treating physician, without addressing whether Dr. Hardison provided a reasoned and documented explanation as to how pneumoconiosis, if present, substantially contributed to, or hastened, the miner's death.[8] *See* 20 C.F.R. §718.205(d)(5); *Odom*, 342 F.3d at 492, 22 BLR at 2-622; *Williams*, 338 F.3d at 501, 22 BLR at 2-625. Thus, we vacate the administrative law judge's finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), and the award of benefits on the survivor's claim and remand the case for further consideration.[9]

To summarize, we instruct the administrative law judge, on remand to make specific findings in the miner's claim as to whether the evidence is sufficient to establish

[8] We reject employer's assertion that Dr. Hardison's opinion is undermined by the absence of evidence in the record to establish that the miner exhibited right-sided hypertrophy. Brief in Support of Petition for Review at 25-26. Dr. Hardison testified that the absence of right ventricular hypertrophy "would lessen [his] thought that [the cardiac condition] was purely from the lung, and . . . [the pulmonary condition] wasn't a major contributor to the cardiac problem. However, one has to factor in hypoxemia . . . ." Claimant's Exhibit 3 at 26. Dr. Hardison also testified that "the heart is a major player. How much the lungs played in it[,] I don't think anyone could a hundred percent (sic) calculate, even if the right heart was perfectly normal." *Id.* at 27. Contrary to employer's contention, Dr. Hardison did not testify that "if there was no evidence of right-sided hypertrophy, then [the miner's] lung problems would not have contributed to his heart problems." Brief in Support of Petition for Review at 25-26.

[9] On remand, the administrative law judge should also consider that Dr. Caffrey assumed the existence of pneumoconiosis in rendering his opinion relevant to 20 C.F.R. §718.205(c). Decision and Order at 28; Director's Exhibit 62.

the existence of clinical and/or legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). If claimant is able to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), the administrative law judge may reinstate his findings that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Thereafter, the administrative law judge must consider whether claimant established that the miner was totally disabled from performing his usual coal mine work under 20 C.F.R. §718.204(b)(2), and, if so, whether the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). *See Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997); *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989). In addition, in the survivor's claim, if claimant is able to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), the administrative law judge must consider whether claimant established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Trumbo*, 17 BLR at 1-87-88. In rendering his decision on remand, the administrative law judge must explain the basis for his credibility determinations, and his findings of fact and conclusions of law in accordance with the APA. *Wojtowicz*, 12 BLR at 1-165.

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 consideration consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge