

BRB No. 07-0209 BLA

B.H.)
(Widow of B.H.))
)
Claimant-Petitioner)
)
v.)
)
PEABODY COAL COMPANY)
)
and)
)
OLD REPUBLIC INSURANCE COMPANY) DATE ISSUED: 10/24/2007
)
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 of Joseph E. Kane,
Administrative Law Judge, United States Department of Labor.

Harold M. Streets, Greenville, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (04-BLA-5614) of Administrative Law Judge Joseph E. Kane on a survivor's claim¹ 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). In the Decision and Order, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718 and credited the miner² with thirty years of qualifying coal mine employment. The administrative law judge found that claimant established that the miner suffered from pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), but failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to find that the miner's death was due to pneumoconiosis under Section 718.205(c). Specifically, claimant contends that the administrative law judge erred in failing to explain his determination that the opinions of Drs. Renn and Rosenberg outweighed the opinion of Dr. Simpao, the miner's treating physician. In response, employer initially asserts that the administrative law judge's decision is amply supported and the result reached was correct. Notwithstanding that employer disagrees with the administrative law judge's determinations that "legal pneumoconiosis" was established or that Dr. Simpao's opinion is reasoned and documented, employer, nevertheless, agrees with claimant that the administrative law judge's decision is not sufficiently explained and, therefore, it fails to comport with the requirements of 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), and the case should be remanded for further findings. The Director, Office of Workers' Compensation Programs, as a party-in-interest, has filed a letter indicating his intention not to participate in this appeal.³

¹ Claimant is the surviving spouse of the miner, who died on April 5, 2001. Director's Exhibit 10. Claimant filed her application for survivor's benefits on August 19, 2002. Director's Exhibit 3.

² The miner filed an application for benefits on April 24, 1984, that was finally denied by the district director on December 18, 1984, and administratively closed. Director's Exhibit 1.

³ We affirm the administrative law judge's determinations with respect to length of coal mine employment and that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), as these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 3, 8-10.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the applicable law, they are binding upon this Board and may not be disturbed. 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).

Claimant contends that, while the administrative law judge determined that the opinions of Drs. Simpao, Renn, and Rosenberg were all well-reasoned and well-documented, the administrative law judge erred in failing to explain why he credited the opinions of Drs. Renn and Rosenberg over the opinion of Dr. Simpao, the miner's treating physician, in finding that claimant failed to establish by a preponderance of the evidence that pneumoconiosis hastened the miner's death under Section 718.205(c). Claimant also argues that the administrative law judge erred in failing to consider Dr. Simpao's opinion in accordance with the regulatory criteria set forth in 20 C.F.R. §718.104(d). In response, employer maintains that the proper course is for the Board to remand the case for further findings in compliance with the APA. We agree.

After accurately reviewing the conflicting medical opinions of record and finding that the opinions of Drs. Simpao, Renn, and Rosenberg⁴ were all well-reasoned, the administrative law judge summarily concluded, with no further analysis, that claimant had failed to establish death due to pneumoconiosis by a preponderance of the evidence. Decision and Order at 11. As the administrative law judge failed to resolve the conflicts in the evidence and provide an explanation for the relative weight he accorded to these medical opinions, his Decision and Order fails to comport with the requirements of the APA. See 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); *Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354, 21 BLR 2-83, 2-87 (3d Cir. 1997) (absence of explanation in administrative law judge's decision renders appellate review impossible as court is unable to determine analytical process underlying the result); *Director, OWCP v.*

⁴ In a report dated June 6, 2003, Dr. Simpao, noting that he treated the miner from January 24, 1974 until the miner's demise on April 5, 2001, opined that pneumoconiosis played a role in the miner's death and reiterated his opinion during his deposition on July 12, 2005. Director's Exhibit 25; Claimant's Exhibit 1. In a report dated April 25, 2004 and during his deposition on May 25, 2006, Dr. Renn opined that pneumoconiosis was neither a cause of, nor a substantially contributing factor to the miner's death. Employer's Exhibits 1, 12. Similarly, Dr. Rosenberg opined that the primary causes of the miner's death were influenza pneumonia and ARDS with superimposed bacterial pneumonia and that he would have suffered from these conditions whether or not he worked in the coal mines. Director's Exhibit 24; Employer's Exhibit 9.

Congleton, 743 F.2d 428, 429-230, 7 BLR 2-12, 2-15 (6th Cir. 1984); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986); *Tenney v. Badger Coal Co.*, 7 BLR 1-589 (1984). Accordingly, we vacate the administrative law judge's finding pursuant to Section 718.205(c), and remand the case for a complete analysis and adequate discussion of all relevant evidence thereunder. On remand, the administrative law judge must also evaluate the probative value of the opinion of Dr. Simpao, the miner's treating physician, in accordance with the factors articulated in Section 718.104(d)(1)-(5), and weigh the opinion against all other relevant evidence in the record. See 20 C.F.R. §718.105(d)(1)-(5); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-646 (6th Cir. 2003) ("...the regulation [§718.104(d)] expects ALJs to analyze the nature and duration of the doctor-patient relationship along with the frequency and extent of treatment"); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 834, 22 BLR 2-320, 2-326-327 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003).⁵

⁵ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit as the miner's last coal mine employment occurred in Kentucky. See *Shupe v. Director*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 3.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge