

BRB No. 07-0998 BLA

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| V.G.  | ) |                         |
| (Widow of H.E.G.)   | ) |                         |
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| Claimant-Petitioner   | ) |                         |
|   | ) |                         |
| v.  | ) |                         |
|   | ) |                         |
| EASTERN ASSOCIATED COAL CORPORATION   | ) | DATE ISSUED: 08/28/2008 |
|   | ) |                         |
| Employer-Respondent   | ) |                         |
|   | ) |                         |
| 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 (2006-BLA-5900) of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Juliet W. Rundle and Associates), Pineville, West Virginia,<sup>1</sup> for claimant.

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

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

Claimant appeals the Decision and Order-Denying Benefits (2006-BLA-5900) of Administrative Law Judge Richard A. Morgan rendered on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of

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<sup>1</sup> Following submission of his brief on appeal, claimant's attorney filed a letter on August 22, 2007, advising of his withdrawal as counsel of record in this matter.

1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).<sup>2</sup> The administrative law judge accepted the parties' stipulation of at least twenty-eight years of qualifying coal mine employment, and adjudicated this survivor's claim pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the doctrine of collateral estoppel was applicable to preclude employer from relitigating the issues of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and disease causality pursuant to 20 C.F.R. §718.203(b). The administrative law judge further found, however, that the evidence was insufficient 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 generally challenges the denial of benefits, and specifically objects to the administrative law judge's weighing of the evidence regarding the cause of the miner's death under Section 718.205(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed no response.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the death was caused by complications of pneumoconiosis, or that the miner suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 718.304; *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). 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)(5); *see also Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).<sup>3</sup> Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

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<sup>2</sup> The miner died on February 26, 2002; this claim for survivor's benefits was filed by claimant, the miner's widow, on September 6, 2005.

<sup>3</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner was last employed in the coal mining industry in West Virginia. Decision and Order at 3; Director's Exhibits 5, 6; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

In support of her appeal, claimant asserts that the opinion of Dr. Mullins should have been credited to establish that the miner's death was due to pneumoconiosis. Moreover, claimant argues that the opinions of Drs. Tuteur and Zaldivar, that the miner's death was not due to pneumoconiosis, were improperly credited because both physicians had concluded that the miner did not have pneumoconiosis.

Having identified the issue of death due to pneumoconiosis as the sole element of entitlement for determination, the administrative law judge summarized the evidence respecting the miner's terminal illness and hospitalization, consisting of hospital treatment notes, death certificate, and medical opinions from treating and reviewing physicians. Decision and Order at 5.<sup>4</sup> Initially, the administrative law judge addressed the miner's death certificate, which reflected that no autopsy was performed. Director's Exhibit 11. The death certificate was signed by attending physician Dr. Porterfield, and listed the immediate cause of death as cardiac arrest due to, or as a consequence of, myocardial infarction, arteriosclerotic cardiovascular disease, chronic obstructive pulmonary disease (COPD), and pneumothorax. Decision and Order at 6-7; Director's Exhibit 11. The administrative law judge observed:

Although chronic obstructive pulmonary disease can constitute legal pneumoconiosis if the disease is due to coal mine employment, in this case, Dr. Porterfield did not specify the etiology of the miner's COPD on the death certificate. Furthermore, the death certificate, in and of itself, is neither reasoned nor documented, since Dr. Porterfield did not explain how the miner's COPD contributed to the miner's cardiac-related death.

Decision and Order at 6-7.

Noting that the death certificate did not mention pneumoconiosis, the administrative law judge characterized the death certificate as "ambiguous at best" regarding the possible role of pneumoconiosis in the miner's death. Decision and Order at 7, 11. Based on the foregoing, although claimant advances no specific challenge to the administrative law judge's disposition of the evidence as to the death certificate and medical opinion of Dr. Porterfield, we conclude that the administrative law judge validly determined that the death certificate lacked probative value in this context, and was rationally deemed equivocal, inadequately explained, and insufficiently reasoned to support a finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Decision and Order at 11-12; see *Bill Branch Coal Corp. v. Sparks [Sparks]*,

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<sup>4</sup> The administrative law judge summarized medical evidence chronicling the final two week hospitalization, during which the miner suffered from spontaneous pneumothoraces, remained on a ventilator, developed subcutaneous emphysema, and suffered "an acute [myocardial infarction] and cardiac arrhythmia," followed by a fatal myocardial infarction. Decision and Order at 5-6, 11.

213 F.3d 186, 22 BLR 2-251(4th Cir. 2000); *see also Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Addison v. Director, OWCP*, 11 BLR 1-68, 1-70 (1988).

Turning to the medical opinion evidence, the administrative law judge accurately reviewed the conflicting evidence of record in the context of the cause of the miner's death, first observing that Drs. Tuteur, Zaldivar and Mullins are all Board-certified pulmonary specialists. Decision and Order at 11. With respect to the death causation issue, Dr. Tuteur believed that the miner had a severe advanced primary pulmonary problem, consisting of "cigarette-smoke induced chronic obstructive pulmonary disease predominantly associated with advanced bullous emphysema." Decision and Order at 8; Employer's Exhibit 5 at 4-7. He specified that the condition is not related to, aggravated by, or caused by either the inhalation of coal mine dust or the development of coal workers' pneumoconiosis. He concluded that had the miner never worked in the coal mining industry, "his clinical course would have been no different," and that "neither coal workers' pneumoconiosis nor any other coal mine dust-related disease process contributed to [the miner's] death, hastened his death, or in any way caused his death." *Id.* Additionally, Dr. Tuteur testified on deposition that the cardiopulmonary problems that caused or contributed to the miner's death are unrelated to coal mine employment. Decision and Order at 9; Employer's Exhibits 5 at 6-7, 7 at 23-24.

Dr. Zaldivar, based on review of the medical evidence and medical literature, opined that the miner did not die as a complication of his previous coal mining work; rather, the miner "died as a result of complications of bullous emphysema caused by his lifelong history of smoking," and his death "was a direct result of his prior smoking habit which damaged his lungs to the extent that air leaks appeared and could not be controlled by insertion of chest tubes." Decision and Order at 9; Employer's Exhibit 6 at 7. Moreover, Dr. Zaldivar explained, the fatal heart attack resulted from coronary artery disease and was unrelated to the miner's occupation. *Id.* He stated that the miner "would have died exactly when and as he did, even if he had never worked in the coal mines." Employer's Exhibit 6 at 7. Additionally, both Drs. Zaldivar and Tuteur stated that, assuming the miner suffered from pneumoconiosis, it did not play any role in causing, hastening or contributing to his death. Decision and Order at 8-9; *see also* Employers Exhibits 7 at 22-24, 8 at 26, 36-37.

In the terminal discharge summary of March 12, 2002, Dr. Mullins stated: "without question, this patient's underlying problem was his coalworkers' pneumoconiosis which was marked." Decision and Order at 11; Director's Exhibit 13 at 18. Dr. Mullins's report of May 2002 recited that she had treated the miner following his 1998 hospitalization, noting that the miner "had severe COPD, thrombocytopenia and anemia," and that he provided a history of pneumoconiosis and fifteen years of coal mine employment. She stated that all of his hospitalizations were based on decompensation of

his lung problems.<sup>5</sup> Director's Exhibit 13 at 60. Further, Dr. Mullins related the course of the miner's terminal hospitalization treatment, beginning with his emergency room presentation in acute distress with a spontaneous pneumothorax, the placement of successive lung tubes, and the development of extensive, subcutaneous emphysema and a leukemoid reaction, followed by an acute myocardial infarction, cardiac arrhythmia, a tracheostomy, and the fatal cardiorespiratory arrest. Decision and Order at 11; Employer's Exhibit 13 at 61. She concluded that the miner "had coal workers' pneumoconiosis, that he was severely disabled as a result of that, and though it is not the immediate cause of death, it played a major, major role in his death." Decision and Order at 7-8; Director's Exhibit 13 at 61.

Of the remaining relevant medical evidence, the administrative law judge determined that although the miner's more recent treatment records and Dr. Mullins's terminal Discharge Summary listed pneumoconiosis as a diagnosis, they did not indicate that pneumoconiosis contributed to his death. Decision and Order at 5-6.

After consideration of the administrative law judge's findings of fact and conclusions of law with regard the relevant evidence of record and the arguments raised on appeal, we conclude that the Decision and Order is rational, supported by substantial evidence, and accords with law. First, contrary to claimant's assertion, the administrative law judge was not required to credit the opinion of Dr. Mullins because she was a treating physician. While the treating status of a physician is an appropriate consideration, extra weight should not be mechanically accorded on that basis. *See* 20 C.F.R. §718.104(d)(5); *Consolidation Coal Co. v. Director, OWCP [Held]*, 314 F.2d 184, 22 BLR 2-564 (4th Cir. 2002). A medical opinion need not be credited if the treating physician's conclusions are not well-reasoned. 20 C.F.R. §718.104(d)(5); *accord Nat'l Mining Ass'n v. U.S. Dep't of Labor*, 292 F.3d 849, 23 BLR 2-124 (D.C. Cir. 2002).

Here, although the administrative law judge acknowledged Dr. Mullins's status as treating physician, he found that her opinion was not well-reasoned and was, therefore, entitled to little weight. Decision and Order at 12. First, with respect to Dr. Mullins's discharge summary evidence, the administrative law judge found that she failed to adequately explain the rationale for her conclusion that "the underlying problem" was the miner's pneumoconiosis. Decision and Order at 11. Next, Dr. Mullins's subsequent report of May 30, 2002, was deemed "similarly deficient," on two bases. First, she failed to satisfactorily explain her conclusion that the miner's "entire disease process (was related to) his COPD/CWP." *Id.* Next, Dr. Mullins failed to explain or document her conclusion that pneumoconiosis "played a major, major role" in the miner's death. *Id.* The administrative law judge found this factor "particularly problematic," since Dr.

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<sup>5</sup> Claimant does not challenge the administrative law judge's characterization of the miner's smoking history as "significant." Decision and Order at 4; *see* Employer's Exhibits 5, 6 at 7, 7 at 12-13, 8 at 31.

Mullins expressly stated “[w]hen we saw him [the miner] he had a diagnosis of coal workers’ pneumoconiosis. We did not independently diagnose that condition.” *Id.*

In contrast, the administrative law judge concluded that the medical opinions of Drs. Tuteur and Zaldivar, albeit “somewhat undermined by their initial failure to diagnose simple pneumoconiosis,” nevertheless both “ultimately addressed the death causation issue, while assuming the presence of simple pneumoconiosis,” and provided detailed analyses of the medical data and terminal hospitalization. Decision and Order at 12. The administrative law judge found their conclusions, that “the miner suffered from bullous emphysema related to cigarette smoking, which, in turn, caused the pneumothorax, myocardial infarction, and death of the miner,” were the better reasoned in establishing that pneumoconiosis did not play any role in the miner’s death. *Id.*

The evaluation of conflicting medical evidence is properly for the finder-of-fact. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *see also Piney Mountain Coal Co., v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998). An administrative law judge must weigh the evidence and draw his own conclusions. *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997). The administrative law judge therefore acted within his discretion in according little weight to Dr. Mullins’s opinion on the basis that it lacked sufficient specificity and explanation to constitute a reasoned medical opinion. *See Sparks*, 213 F.3d 186, 22 BLR 2-251; *Addison*, 11 BLR at 1-70. Claimant’s burden of proof requires establishment of a causal connection between the miner’s pneumoconiosis and his death. *Sparks*, 213 F.3d at 193-194, 22 BLR at 2-263. As Dr. Mullins did not independently diagnose pneumoconiosis and her evidence failed to explain any correlation or connection between the diagnosed history of pneumoconiosis and the miner’s death, the administrative law judge’s conclusion is rational and accords with law. Claimant’s assertion that Dr. Mullins’s opinion was sufficient to carry her burden of proof to establish that the miner’s death was due to pneumoconiosis pursuant to Section 718.205(c) is therefore without merit, *see Hicks*, 138 F.3d at 533, 21 BLR at 2-336, and essentially amounts to a request to reweigh the evidence, which is beyond the Board’s scope of review. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

We therefore conclude that the administrative law judge properly identified deficiencies in the foregoing evidence and provided a valid rationale in support of his determination that the medical evidence of record failed to demonstrate that the miner’s death was due to pneumoconiosis pursuant to Section 718.205. Decision and Order at 12. Since both the death certificate evidence and the only medical opinion of record that could support a finding that the miner’s death was due to pneumoconiosis were

permissibly rejected,<sup>6</sup> we affirm the administrative law judge's conclusion that a finding of entitlement is not warranted in this case. *See* 20 C.F.R. §718.205(c); *Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Trent*, 11 BLR at 1-27.

Accordingly, the administrative law judge's Decision and Order-Denying Benefits is affirmed.

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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BETTY JEAN HALL  
Administrative Appeals Judge

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<sup>6</sup> In this connection, we note that claimant's principal assertion on appeal, that the administrative law judge "characterized the reports of Dr. Tuteur and Dr. Zaldivar were somehow better reasoned than that of Dr. Mullens (sic) and that he would accept them over her report," Claimant's Brief at 4, is inapposite. The administrative law judge determined that Dr. Mullins's report was not well reasoned and was insufficient to establish death due to pneumoconiosis. The administrative law judge specified that even if little weight had been accorded to the opinions of Drs. Tuteur and Zaldivar, claimant still would have "failed to meet her burden of proof." Decision and Order at 12.