

BRB No. 02-0599 BLA

MARY LOUISE ZEGLIN	)	
(Widow of WALTER J. ZEGLIN)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
CONSOLIDATED ENERGY,	)	
INCORPORATED	)	
	)	
Employer/Carrier-	)	
Petitioners	)	
	)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Ashley M. Harman (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer and carrier.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand (99-BLA-1366) of Administrative Law Judge Richard A. Morgan awarding benefits 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).<sup>1</sup> This case is on appeal before the Board for a second time. In the last appeal, the Board affirmed the administrative law judge's finding that the weight of the evidence established that the miner's emphysema and/or chronic obstructive pulmonary disease (COPD) constituted pneumoconiosis as defined at 20 C.F.R. §718.201 (2000),<sup>2</sup> and affirmed the administrative law judge's consequent discrediting of the opinions of Drs. Naeye, Kleinerman, Caffrey and Fino on the issue of the cause of the miner's death.<sup>3</sup> The Board vacated the award of benefits, however, because the

---

<sup>1</sup>The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>2</sup>Although the administrative law judge accepted the stipulation of the parties that the miner engaged in at least twenty-one years of qualifying coal mine employment and had simple pneumoconiosis arising out of coal mine employment, he additionally found that the weight of the evidence established that the miner had legal pneumoconiosis in the form of emphysema and/or COPD, as well as clinical pneumoconiosis. Decision and Order at 3, 27-28, 30-32.

<sup>3</sup>The administrative law judge concluded that the opinions of Drs. Naeye, Kleinerman, Caffrey and Fino, that the miner's death was unrelated to pneumoconiosis, were entitled to little weight because, *inter alia*, he found that Drs. Naeye, Kleinerman and Caffrey diagnosed

administrative law judge failed to explain why he discounted Dr. Oesterling's opinion, that the miner's pneumoconiosis and emphysema did not hasten the miner's death. The Board remanded this case for the administrative law judge to reevaluate Dr. Oesterling's opinion, accord it appropriate weight relative to the contrary probative evidence of record, and explain his credibility determinations pursuant to 20 C.F.R. §718.205(c)(2). *Zeglin v. Island Creek Coal Co.*, BRB No. 00-0997 BLA (Sep. 28, 2001) (unpub.).

On remand, the administrative law judge found that the weight of the evidence was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(2). Accordingly, benefits were awarded. In the present appeal, employer challenges the administrative law judge's findings pursuant to Section 718.205(c)(2). Claimant responds, urging affirmance of the award of benefits, to which employer replies, reiterating its arguments on appeal. The Director, Office of Workers' Compensation Programs, has declined to submit a brief on the merits of this appeal.

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 applicable law, they are binding upon this Board and may not be disturbed. 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).

After consideration of the administrative law judge's Decision and Order on Remand, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order on Remand of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Employer maintains that the administrative law judge did not follow the Board's instructions on remand and that he failed to adequately explain his reasons for crediting the opinions of Drs. Perper, Rizkalla and Ashcraft over the contrary opinion of Dr. Oesterling. We disagree.

In evaluating the conflicting medical opinions at Section 718.205(c)(2), the administrative law judge incorporated his analysis of the evidence in the original Decision

---

emphysema but failed to adequately address its etiology and/or the role that it played in the miner's pulmonary problems and death, and Dr. Fino's opinion did not address whether the miner had COPD or emphysema. Decision and Order at 30-31; Decision and Order on Reconsideration at 2-3.

and Order and the Decision and Order on Reconsideration, as affirmed by the Board. The administrative law judge had previously summarized the relevant evidence of record, the qualifications of the physicians and the bases for their opinions. Decision and Order on Remand at 3; Decision and Order at 7-26, 29-35; Decision and Order on Reconsideration at 1-3. The administrative law judge determined that, while the physicians agreed that the miner died due to a combination of respiratory and cardiac problems, they disagreed as to whether the miner suffered from cor pulmonale and pulmonary emboli, and the role that clinical and/or legal pneumoconiosis played in the miner's death. The administrative law judge found that Dr. Oesterling opined that the miner did not have cor pulmonale but had pulmonary emboli which caused pulmonary hypertension, and that his death was unrelated to pneumoconiosis and/or emphysema but was caused by congestive heart failure due to a failing left ventricle with systemic passive congestion. *Id.*; Director's Exhibit 30, Employer's Exhibit 4. The administrative law judge also found that Drs. Perper, Rizkalla and Ashcraft opined that the miner's clinical and legal pneumoconiosis together caused hypoxemia, which led to the development of pulmonary hypertension and cor pulmonale, and hastened the miner's death. Director's Exhibits 6, 8, 29, Claimant's Exhibits 1, 3, Employer's Exhibit 3; Decision and Order on Remand at 4-5; Decision and Order at 14-23, 29-35; Decision and Order on Reconsideration at 3.

The administrative law judge had previously determined that the weight of the evidence established the presence of cor pulmonale. The administrative law judge based this finding on the opinions of Drs. Schaaf, Perper, Ashcraft and Rizkalla, the autopsy findings of a dilated right ventricle and a normal left ventricle, congestion in the liver and kidney representative of right heart failure, the December 14, 1997 CT findings by Dr. Navani, a Board-certified radiologist, and the multiple lifetime hospital records and physicians' reports documenting cor pulmonale by x-rays, cardiac catheterization findings, and echocardiograms. Decision and Order at 32-33; Decision and Order on Reconsideration at 3.

Pursuant to the Board's remand instructions, the administrative law judge reevaluated Dr. Oesterling's opinion in conjunction with the totality of the medical evidence. Decision and Order on Remand at 4-5. The administrative law judge acknowledged Dr. Oesterling's expert credentials in the fields of Anatomical and Clinical Pathology and Nuclear Medicine, but acted within his discretion as trier-of-fact in finding that Dr. Oesterling's opinion was outweighed by the contrary expert opinions of Drs. Perper, Rizkalla and Ashcraft.<sup>4</sup> The

---

<sup>4</sup>The record reflects that Dr. Perper is Board-certified in anatomical and forensic pathology, Director's Exhibit 28; Dr. Rizkalla, the autopsy prosector, is Board-certified in anatomic and clinical pathology, Director's Exhibits 8, 29; and Dr. Ashcraft is Board-certified in anatomic and clinical pathology and hematology, Claimant's Exhibits 2, 3. Decision and Order at 14, 19, 20.

administrative law judge rationally determined that these opinions were well reasoned and “more consistent with the miner’s significant coal mine employment history, the miner’s history of respiratory and cardiac problems, the evidence of disabling hypoxemia as shown by the arterial blood gas results, the lifetime clinical evidence of cor pulmonale, and the pathology evidence of pneumoconiosis.” Decision and Order on Remand at 5; *see generally Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom,<sup>5</sup> *see Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 9 BLR 2-1 (3d Cir. 1986); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). The administrative law judge’s findings pursuant to Section 718.205(c)(2) are supported by substantial evidence, and thus are affirmed. Consequently, we affirm the administrative law judge’s award of benefits. *See Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989).

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

SO ORDERED.

---

<sup>5</sup>Contrary to employer’s arguments, the administrative law judge additionally quoted passages from Dr. Oesterling’s deposition testimony which adequately supported the administrative law judge’s conclusion that the physician’s opinion was “somewhat ambiguous and inconsistent,” as Dr. Oesterling variably described the severity of the miner’s pneumoconiosis as “moderate” and “very mild;” he stated that the lungs played a significant role in the miner’s death; he agreed that pneumoconiosis and emphysema could have contributed to death if they were of sufficient magnitude to cause hypoxia; and he concluded that the miner suffered from biventricular disease rather than cor pulmonale, despite acknowledging that the miner had congestion in the kidney and liver indicative of right heart failure and that some of the miner’s lifetime clinical records revealed right ventricular dilation or cor pulmonale, with no left ventricular problems. Decision and Order on Remand at 4-5; Employer’s Exhibit 4.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

REGINA C. McGRANERY  
Administrative Appeals Judge