BRB No. 07-0822 BLA

V.M. (Widow of S.M.) Claimant-Respondent v. CLINCHFIELD COAL COMPANY c/o ACORDIA EMPLOYERS SERVICE Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 07/29/2008 DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Rita Roppolo (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (06-BLA-5738) of Administrative Law Judge Larry W. Price (the administrative law judge) on claimant's request for modification of the denial of 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] The survivor's claim was previously considered by Administrative Law Judge Pamela Lakes Wood, who determined that, although the miner had established the existence of pneumoconiosis in his successful claim for benefits, and no autopsy evidence was submitted in the survivor's claim, collateral estoppel did not apply to preclude employer from relitigating the issue of whether the miner had pneumoconiosis. Specifically, Judge Wood determined that the decision by the United States Court of Appeals for the Fourth Circuit in *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), changed the law for determining the existence of pneumoconiosis by requiring that all types of evidence presented pursuant to 20 C.F.R. §718.202(a)(1)-(4) be weighed together, such that the issue of whether the miner had pneumoconiosis was not identical to the one previously litigated in the miner's claim in 1999.[2] Judge Wood found the evidence in the survivor's claim insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and she denied benefits. Decision and Order Denying Benefits of March 3, 2005; Director's Exhibit 55.

Pursuant to claimant's request for modification, the administrative law judge determined that Judge Wood made a mistake in a determination of fact when she found that the issue of the existence of pneumoconiosis in the survivor's claim was not identical to the issue previously litigated in the miner's claim. *See* 20 C.F.R. §725.310. The administrative law judge relied on *Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 23 BLR 2-393 (4th Cir. 2006), wherein the Fourth Circuit court held that *Compton* did not alter the burden of proof on the issue of the existence of pneumoconiosis and that, therefore, the issue of whether the miner had pneumoconiosis in a survivor's claim was identical to the issue that was determined in the miner's successful, pre-*Compton* claim.

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[1] Claimant is the widow of the miner, who died on February 1, 2001. Director's Exhibit 12. The miner filed applications for benefits on April 3, 1980, March 30, 1992, and March 24, 1994. Director's Exhibits 1-3. Benefits were awarded on the miner's third claim by Administrative Law Judge Frederick D. Neusner on September 24, 1999. Director's Exhibit 3. The Board affirmed Judge Neusner's award of benefits. [*S.M.*] *v. Clinchfield Coal Co.*, BRB No. 00-0190 BLA (Oct. 20, 2000)(unpub.). Claimant filed her survivor's claim on March 26, 2001. Director's Exhibit 4. In a Decision and Order issued on March 3, 2005, Administrative Law Judge Pamela Lakes Wood denied benefits on the survivor's claim. Director's Exhibit 55. Claimant timely requested modification on January 10, 2006. Director's Exhibit 56.

[2] The record indicates that the miner's coal mine employment was in Virginia. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

Finding that the elements of collateral estoppel were established and that application of the doctrine was not unfair to employer, the administrative law judge determined that collateral estoppel barred employer from relitigating the issues of the existence of pneumoconiosis and the cause of the miner's pneumoconiosis in the survivor's claim. The administrative law judge further found that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, he awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that Judge Wood made a mistake in a determination of fact, and erred in applying the doctrine of offensive non-mutual collateral estoppel. Employer also asserts that the administrative law judge erred in finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). The Director, Office of Workers' Compensation Programs (the Director), responds by letter, and urges the Board to reject employer's arguments regarding the administrative law judge's application of collateral estoppel. Employer has filed a reply brief, restating its position. Claimant 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Procedural Issues

Employer asserts that the administrative law judge erred in finding that Judge Wood made a mistake in a determination of fact. Employer argues that Judge Wood's prior decision not to apply collateral estoppel was a purely legal determination that was not subject to modification based on a change of law. Further, employer contends that *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993), does not support the administrative law judge's finding that the prior mistake was one of fact. In response, the Director maintains that "the question of identity of issue, if not purely factual in nature, is at the very least a mixed question of fact and law," which is treated like a question of fact for modification purposes in the Fourth Circuit. Director's Letter at 2.

As the administrative law judge noted, after Judge Wood issued her 2005 Decision and Order, the Fourth Circuit issued its decision in *Collins*, where the court determined that a pre-*Compton* finding of pneumoconiosis made in a miner's claim had collateral estoppel effect in a post-*Compton* survivor's claim. The court held that the issue that claimant sought to establish post-*Compton*, the existence of pneumoconiosis due to the miner's coal mine employment, was identical to the issue decided in the miner's claim pre-*Compton*. *Collins*, 468 F.3d at 219, 23 BLR at 2-403. The court reasoned that after

Compton, claimant bore "the same burden (a preponderance of the evidence) to establish the same fact (that [the miner] suffered from pneumoconiosis as a result of his [coal mine employment]) in the same manner (through one of the four methods prescribed by the §718.202(a) subsections) as [the miner] bore. . . ." *Collins*, 468 F.3d at 219, 23 BLR at 2-404.

The administrative law judge then considered the five requirements that must be established for collateral estoppel to apply, namely, that:

> (1) the issue sought to be precluded is identical to one previously litigated;
> (2) the issue was actually determined in the prior proceeding;
> (3) the issue was a critical and necessary part of the judgment in the prior proceeding;
> (4) the prior judgment is final and valid; and
> (5) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue in the previous forum.

Decision and Order at 3; *see Collins*, 468 F.3d at 217, 23 BLR at 2-401. He found that in view of the Fourth Circuit's decision in *Collins*, "Judge Wood made a mistake in a determination of fact in finding that Claimant did not meet the first condition for application of the doctrine of collateral estoppel." Decision and Order at 4.

The sole ground available for modification of a survivor's claim is a mistake in a determination of fact. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). An administrative law judge is authorized "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971). The Fourth Circuit has held that the "modification procedure is extraordinarily broad, especially insofar as it permits the correction of mistaken factual findings. . . . [and] any mistake of fact may be corrected [by the administrative law judge], including the ultimate issue of benefits eligibility." *Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 497, 22 BLR 2-1, 2-11 (4th Cir. 1999); *Jessee*, 5 F.3d at 725, 18 BLR at 2-28. Further, in *Jessee*, the court stated that "[i]f a claimant avers generally that the [administrative law judge] improperly found the ultimate fact and thus erroneously denied the claim, the [administrative law judge] has the authority, without more, to modify the denial of benefits. There is no need for a smoking-gun factual error . . . or startling new evidence." *Jessee*, 5 F.3d at 726, 18 BLR at 2-28. The *Jessee* court also quoted with approval *Amax Coal Co. v. Franklin*, 957 F.2d 355, 16 BLR 2-50 (7th Cir. 1992), which discussed the nature of findings in a black lung case and explained that "for many legal purposes (appellate review, for example) such facts, though they are not facts in the lay sense but are instead the outcome of applying legal standards to facts, are treated like facts, and one of those purposes we think should be that of deciding whether

a black lung case should be reopened" on modification. *Jessee*, 5 F.3d at 726 n.3, 18 BLR at 2-29-30 n.3.

Because the issue at hand addresses one of the ultimate factual issues, *i.e.*, whether the miner suffered from pneumoconiosis, and in view of the Fourth Circuit's holdings explaining the breadth of mistake-in-fact modification, we hold that the administrative law judge rationally concluded that Judge Wood's decision not to apply the doctrine of collateral estoppel to the issue of the existence of pneumoconiosis was subject to modification. *See Stanley*, 194 F.3d at 497, 22 BLR at 2-11; *Jessee*, 5 F.3d at 726 n.3, 18 BLR at 2-29-30 n.3. Consequently, we reject employer's assertion that the administrative law judge erred by finding that Judge Wood's decision regarding collateral estoppel contained a mistake in a determination of fact that was subject to modification.

Employer also challenges the administrative law judge's application of offensive non-mutual collateral estoppel, asserting that application of the doctrine is unfair to employer. Employer contends that it did not have a full and fair opportunity to litigate the issue of the existence of pneumoconiosis in the miner's claim. Employer argues that the revised regulations limiting the quantity of evidence in black lung claims afford employer greater procedural opportunities than it had in the miner's claim. The Director responds, urging the Board to reject employer's assertions.

After finding that claimant satisfied the conditions for the application of collateral estoppel, and because claimant was not a party to the living miner's claim, the administrative law judge considered whether allowing claimant to rely on the doctrine of offensive non-mutual collateral estoppel was unfair to employer. The administrative law judge reviewed the factors to be considered:

> (1) whether the survivor could easily have joined in the earlier proceeding;
> (2) whether the employer "had an incentive in the prior action to have defended the action fully and vigorously";
> (3) whether the employer has ever obtained a ruling that the miner did not suffer from pneumoconiosis; and
> (4) whether procedural opportunities are available to the employer in the survivor's claim that were unavailable to the employer in the proceeding involving the living miner's claim.

Decision and Order at 4; *see Parkland Hosiery Co., v. Shore*, 439 U.S. 322 (1979); *Polly v. D & K Coal Co.*, 23 BLR 1-77 (2005). The administrative law judge found that claimant could not have joined the miner's claim, "as spouses of living miners with pneumoconiosis are not entitled to seek benefits," that employer "had an incentive to present a vigorous defense in the miner's claim and there was no finding subsequent to the award of benefits in the miner's claim that the miner did not suffer from

pneumoconiosis," and that there were no procedural opportunities available to employer in the survivor's claim that were not available to it in the miner's claim. Decision and Order at 4. Therefore, the administrative law judge determined that application of offensive non-mutual collateral estoppel would not be unfair to employer.

Employer asserts that it was denied a full and fair opportunity to litigate the issue of the existence of pneumoconiosis in the miner's claim. We disagree. Employer contends that it is disadvantaged because claimant has the exclusive authority to allow an autopsy, and argues that "allowing a survivor to use collateral estoppel in this way will discourage survivors from obtaining an autopsy." Employer's Brief at 9. Similar arguments were rejected in *Collins*. The court stated that employer's "concern that a coal miner's widow might 'decline an autopsy and urge the application of "collateral estoppel"' ignores the fact that a widow cannot succeed in her claim for survivor's benefits without further establishing that pneumoconiosis hastened her husband's death." *Collins*, 468 F.3d at 222, 23 BLR at 2-409. Therefore, we also reject employer's assertion.

We also reject employer's assertion that the evidentiary limitations of 20 C.F.R. §725.414 substantially changed the law.[3] As the Director notes, claimant still retains the burden of proof. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994). Moreover, administrative law judges "have always had discretion to exclude evidence in precisely the manner outlined by the new evidence-limiting rules, . . . [and t]he amended regulations codif[ied] evidentiary limits that [administrative law judges] have always had the discretion to impose." *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 874, 23 BLR 2-124, 2-181 (D.C. Cir. 2002), *quoted in Elm Grove Coal Co. v. Director, OWCP* [*Blake*], 480 F.3d 278, 23 BLR 2-430 (4th Cir. 2007). For these same reasons, we reject employer's assertion that the evidentiary limitations in the amended regulations provide it with greater procedural opportunities than it had in the miner's claim. The amended regulations did nothing more than codify the limits that administrative law judges have always had the discretion to impose. In addition, employer has not shown how the evidentiary limitations are a procedural opportunity "of a kind that might be likely to cause a different result." *Shore*, 439 U.S. at 332. Moreover, because the amended regulations allow the parties to submit the same amount of evidence, the parties have equal procedural opportunity. *See* 20 C.F.R. §725.414. Consequently, we reject employer's assertions in this regard.

Further, we reject employer's assertion that *Collins* should not be applied retroactively. Employer states that it would have developed its case and evidence

[3] The evidentiary limitations apply to claims filed after January 19, 2001. *See* 20 C.F.R. §725.2(c).

differently had it known that collateral estoppel would be applied to the issue of the existence of pneumoconiosis. The Fourth Circuit has held that when "debatable questions of law are resolved . . . . the law has been declared, not changed." *Stanley*, 194 F.3d at 501, 22 BLR at 2-17-18. Thus, since *Collins* did not change the law, but declared it, we reject employer's assertion that *Collins* should not be applied in the instant case. In addition, the Board applies the law in effect at the time it renders its decision, unless to do so would result in manifest injustice. *Lynn v. Island Creek Coal Co.*, 12 BLR 1-146 (1989)(*en banc*)(McGranery, J., concurring). Employer had the opportunity to present evidence and arguments regarding the cause of the miner's death pursuant to Section §718.205, and applying the law currently in effect is appropriate as it does not result in manifest injustice. *See Lynn*, 12 BLR at 1-147. Consequently, we hold that the administrative law judge did not abuse his discretion in permitting the use of offensive non-mutual collateral estoppel in this case.

Based on the foregoing, we affirm the administrative law judge's finding that the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203 was established by collateral estoppel.

Merits

Employer asserts that the administrative law judge erred in finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Specifically, employer contends that Dr. Patel, whose opinion was relied on by the administrative law judge, was vague and speculative, and based on a "shaky" diagnosis of pneumoconiosis. Employer's Brief at 16. In addition, employer asserts that the administrative law judge erred by discrediting the opinions of Drs. Fino and Castle, particularly the portions of their opinions that were based on the assumption that the miner had pneumoconiosis.

In order to establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that the 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, or was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(c)(1)-(4). 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); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000).

The administrative law judge found that the opinion of Dr. Patel, that coal workers' pneumoconiosis contributed to the miner's death from cardiac arrhythmia, supported an award of benefits. Decision and Order at 7. The administrative law judge noted that Dr. Patel was the miner's treating physician, and stated:

> I do not find that the fact that Dr. Patel used equivocal terminology, that the "most likely explanation for sudden death would be an episode of cardiac arrhythmia precipitated by his underlying cardiopulmonary disease" and that "the patient possibly developed hypoxemia, followed by malignant cardiac arrhythmia" to distract [sic] from the credibility of his opinion. . . . While I give less weight to the opinions of Drs. Castle and Fino as to whether pneumoconiosis played a role in the miner's death, I note that Dr. Castle testified that cardiac arrhythmia caused the miner's death and Dr. Fino found that lung disease contributed to the miner's death. The records of the miner's hospitalizations prior to his death documented his recent bouts of cardiac arrhythmia, hypoxemia, and ischemia. Dr. Patel related the miner's recent acute exacerbation of lung disease to his coal workers' pneumoconiosis and found that it placed additional stress on the miner's cardiovascular system causing ischemia. Dr. Patel concluded that coal workers' pneumoconiosis contributed to the miner's death.

Decision and Order at 7 (citations omitted).

The record contains discharge summaries from 2000 and 2001 prepared by Dr. Patel. In these summaries, the miner was diagnosed with chronic obstructive pulmonary disease, congestive heart failure, coal workers' pneumoconiosis, and numerous other conditions. Director's Exhibit 13. The miner's death certificate, signed by Dr. Patel, indicated that the miner died on February 1, 2001, and listed the immediate cause of death as cardiopulmonary arrest, due to cardiac arrhythmia due to "CWP[,] COPD[,] ASHD." Director's Exhibit 12. In an October 2, 2001 letter, Dr. Patel stated that the miner:

> was a 79-year-old male patient with known history of coal workers' pneumoconiosis, COPD, longstanding hypertension, angina pectoris with previous myocardial infarction, peripheral vascular disease and history of cardiac arrhythmia, who was hospitalized from 01-15-01 to 01-23-01 for COPD with acute exacerbation and biventricular CHF. During the hospitalization, the patient also had subendocardial ischemia, but no myocardial infarction. After eight days of hospitalization, the patient was discharged home and at the time of discharge from the hospital the patient's condition was still quite debilitated and patient was more or less bedfast. . . . To my knowledge on February 1st 2001 the patient was found without any

> spontaneous respirations, pulse or blood pressure by his family. The most likely explanation for sudden death would be an episode of cardiac arrhythmia precipitated by his underlying cardiopulmonary disease. At the time of discharge the patient was on oxygen supplement two liters per minute by nasal cannula. Since the patient was recovering from his recent acute exacerbation of lung disease related to his coal workers' pneumoconiosis with recurrent respiratory tract infection, the patient possibly developed hypoxemia, followed by malignant cardiac arrhythmia. Over the years the patient has been hospitalized for his lung condition with either acute bronchitis or pneumonia, and his cardiac condition has been relatively stable, but with acute exacerbations of his lung disease, the patient had additional stress to the cardiovascular system causing ischemia.
>
> In my opinion, his coal workers' pneumoconiosis contributed to his death.

Director's Exhibit 14.

Employer challenges the administrative law judge's reliance on Dr. Patel's opinion. Citing *United States Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999), employer asserts that a medical opinion phrased "it is possible" that pneumoconiosis hastened death is not reliable, probative, and substantial evidence. Employer also asserts that Dr. Patel's diagnosis of pneumoconiosis was "shaky." Employer's Brief at 16.

The administrative law judge considered the "equivocal terminology" in Dr. Patel's opinion and found that it did not detract "from the credibility of his opinion." Decision and Order at 7. The Fourth Circuit court has held that the use of cautious language by a doctor does not necessarily reflect equivocation by the doctor, and that it is the function of the administrative law judge to evaluate the strength of a doctor's opinion. *See Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366, 23 BLR 2-374, 2-386 (4th Cir. 2006); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999). The Board has held that an equivocal opinion need not be rejected on that basis. Rather, the administrative law judge must consider the qualified nature of the medical opinion in evaluating the evidence, *Salisbury v. Island Creek Coal Co.*, 7 BLR 1-501 (1984), which the administrative law judge did in this case. Moreover, unlike in *Jarrell*, where the court noted that the physician was "unable and unwilling to give an opinion with any degree of medical certainty that there was some causal relationship between either Jarrell's pneumoconiosis and his pneumonia or his pneumonia and his death," *Jarrell*, 187 F.3d at 390, 21 BLR at 2-650, Dr. Patel's opinion that the miner's coal workers' pneumoconiosis contributed to his death was not equivocal. *See Mays*, 176 F.3d at 763-64, 21 BLR at 2-606; Director's Exhibit 14. In view of the foregoing, we reject employer's assertion that Dr. Patel's opinion is insufficient to support an award of benefits. In addition, we reject

employer's contention that Dr. Patel's diagnosis of pneumoconiosis was too unreliable to be the basis of a finding of death due to pneumoconiosis. The existence of pneumoconiosis was established by collateral estoppel, and the issue before the administrative law judge was the cause of the miner's death. Thus, there was no requirement that the administrative law judge, in his analysis of the evidence pursuant to Section 718.205(c), consider the basis for the physician's diagnosis of pneumoconiosis.

The administrative law judge accorded less weight to the opinions of Drs. Castle and Fino that the miner's death was unrelated to pneumoconiosis because neither doctor diagnosed pneumoconiosis, contrary to the finding that the existence of pneumoconiosis was established.[4] Employer asserts that the administrative law judge erred by discounting the opinions of Drs. Castle and Fino, despite their statements that even if the miner had pneumoconiosis, it did not cause his death. We disagree.

The Fourth Circuit has held that, where an administrative law judge has found the existence of pneumoconiosis arising out of coal mine employment established, the administrative law judge may "only give weight to the causation opinions of the physicians who [did] not diagnose[] pneumoconiosis 'if he provide[s] specific and persuasive reasons for doing so, and those opinions could carry little weight, at the most.'" *Collins*, 468 F.3d at 224, 23 BLR at 2-412, quoting *Scott v. Mason Coal Co.*, 289

[4] Dr. Castle, who is Board-certified in Internal Medicine and Pulmonary Diseases, diagnosed bronchial asthma and cardiac disease, and opined that the miner did not suffer from coal workers' pneumoconiosis. He opined that the miner's death was the result of a cardiac arrhythmia due to coronary artery disease and aortic stenosis. He stated that pneumoconiosis did not cause, contribute to, or hasten the miner's death. Director's Exhibit 30. In a subsequent deposition, when he was asked, "Did [the miner's] lung disease, whether it was pneumoconiosis or whether it was asthma, cause any of his cardiac problems?", Dr. Castle answered "No, sir, none whatsoever." Director's Exhibit 47 at 21. Dr. Fino, who is Board-certified in Internal Medicine and Pulmonary Diseases, diagnosed asthma that contributed to the miner's death. Dr. Fino opined that coal mine dust inhalation did not cause, contribute to, or hasten the miner's death:

> It is my opinion that this man would have died as and when he did had he never stepped foot in the coal mines. It is also my opinion that even if this man suffered a loss of FEV1 due to coal mine dust as described above based on epidemiologic studies, it did not contribute to, or hasten, his death, and he would have died as he did whether or not he ever worked in the mining industry.

Director's Exhibit 45.

F.3d 263, 22 BLR 2-372 (4th Cir. 2002); *see also Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995). Here, the administrative law judge found the existence of pneumoconiosis arising out of coal mine employment established. By contrast, Drs. Castle and Fino opined that the miner did not have pneumoconiosis and they did not diagnose any symptoms related to coal mine dust exposure. Director's Exhibits 30, 45, 47. Thus, the administrative law judge properly gave their opinions as to whether pneumoconiosis caused the miner's death "little weight." Decision and Order at 7; *Scott*, 289 F.3d at 269, 22 BLR at 2-384. The fact that Drs. Castle and Fino assumed the existence of pneumoconiosis for part of their causation opinions does not alter the analysis. *See Scott*, 289 F.3d at 267, 22 BLR at 2-379-80 (noting that the physicians stated that their opinions would not change even assuming a diagnosis of pneumoconiosis). Therefore, we reject employer's contention.

Consequently, we affirm the administrative law judge's finding that claimant established that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), and we affirm the award of benefits.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge