

BRB No. 99-0688 BLA

HARRIETT J. ANDERSON)	
(Widow of GORDON R. ANDERSON))	
)	
Claimant-Respondent)	
)	
v.)	
)	
VALLEY CAMP COAL COMPANY)	DATE ISSUED:
)	
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 of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Aliza Organick (Miners' Legal Resource Center), Albuquerque, New Mexico, for claimant.

Ronald B. Johnson (McDermott & Bonenberger), Wheeling West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (98-BLA-0445) of Administrative Law Judge Thomas F. Phalen, Jr., 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).¹ The administrative law judge found twenty-two and one-

¹ Claimant is the surviving widow of the miner, Gordon R. Anderson, who died on February 6, 1997, Director's Exhibit 5. On May 31, 1991, the miner had been awarded benefits pursuant to a miner's claim filed on September 5, 1989, and the Board had affirmed the award of benefits on appeal, *see Anderson v. Valley Camp Coal Co.*, BRB No. 91-1511

half years of coal mine employment established and adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718. The administrative law judge found the existence of pneumoconiosis arising out of coal mine employment established pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(b). The administrative law judge further found that death due to pneumoconiosis was established pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were awarded. On appeal, employer contends that the administrative law judge erred in finding death due to pneumoconiosis established pursuant to Section 718.205(c). Claimant responds, urging that the Decision and Order of the administrative law judge awarding benefits be affirmed. The Director, Office of Workers' Compensation Programs, as party-in-interest, has not responded to 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

BLA (Apr. 30, 1992)(unpub.). Subsequent to the miner's death, claimant filed a survivor's claim on March 14, 1997, Director's Exhibit 1.

In order to establish entitlement in this survivor's claim filed after January 1, 1982, in which the miner had not been awarded benefits on a claim filed prior to January 1, 1982, *see* 30 U.S.C. §§901; 932(1), claimant must establish the existence of pneumoconiosis, *see* 20 C.F.R. §718.202; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988),² and that the miner's death was due to pneumoconiosis, *see* 20 C.F.R. §§718.1; 718.205(c); *Neeley, supra*; *cf. Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989), which arose out of coal mine employment, *see* 20 C.F.R. §718.203; *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Moreover, the United States Court of Appeals for the Fourth Circuit, wherein this case arises, has held that, pursuant to Section 718.205(c)(2), pneumoconiosis substantially contributes to death if it hastens the miner's death, *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).³

The administrative law judge considered the relevant evidence pursuant to Section 718.205(c), including the opinion of Dr. Aguilar, who treated the miner prior to his death and completed a "Death Summary" which listed as an "admitting diagnosis" "esophageal varices

² The administrative law judge properly found that the presumptions at Section 411(c)(2) of the Act, 30 U.S.C. §921(c)(2), as implemented by 20 C.F.R. §718.303, at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, and at Section 411(c)(5) of the Act, 30 U.S.C. §921(c)(5), as implemented by 20 C.F.R. §718.306, are inapplicable to this survivor's claim filed after January 1, 1982, *see* 20 C.F.R. §§718.303(c); 718.305(a), (e); 718.306(a); Director's Exhibit 1. Decision and Order at 10. Moreover, inasmuch as the administrative law judge's findings that the existence of pneumoconiosis arising out of coal mine employment was established pursuant to Sections 718.202(a)(1) and 718.203(b), Decision and Order at 10-12, have not been challenged by any party on appeal, they are affirmed, *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

³ Inasmuch as a review of the record indicates that claimant's most recent coal mine employment was performed in West Virginia, *see* Director's Exhibits 19-20, the instant 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 (1989). Thus, the administrative law judge erred in finding that the miner's last coal mine employment took place in New Mexico and, therefore, in holding that this case arises within the jurisdiction of the United States Court of Appeals for the Tenth Circuit, *see Tackett v. Director, OWCP*, 7 BLR 1-703 (1985). However, inasmuch as the Tenth Circuit Court adopted the holding of the Fourth Circuit Court in *Shuff in Northern Coal Co. v. Director, OWCP [Pickup]*, 100 F.3d 871, 20 BLR 2-335 (10th Cir. 1996), any error by the administrative law judge in applying the holding in *Pickup* under Section 718.205(c) is harmless, *see Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

and bleed” and listed as “secondary diagnoses” cirrhosis and congestive heart failure, Director’s Exhibit 6. In a subsequent letter, Dr. Aguilar stated that miner silicosis “played a part” in the miner’s “multisystem disease,” Director’s Exhibit 11. Dr. Aguilar also completed the miner’s death certificate, which stated that the miner died due to cardiopulmonary arrest due to cirrhosis, Director’s Exhibit 5.

The administrative law judge assigned Dr. Aguilar’s opinion considerable weight as the miner’s treating physician and found that his opinion supported a finding that pneumoconiosis hastened the miner’s death, Decision and Order at 12. The administrative law judge also found that the opinions of Dr. Walter, who treated the miner in 1989 and 1990 and diagnosed congestive heart failure and “black lung,” Claimant’s Exhibits 4-5, “buttress” Dr. Aguilar’s opinion. However, the administrative law judge found the miner’s death certificate “unreliable” because the qualifications of “the physician” who signed it are unknown as well as the extent of the personal knowledge the physician had of the miner’s condition, Decision and Order at 14.

As employer contends, and contrary to the administrative law judge’s findings, Dr. Aguilar did not opine that pneumoconiosis contributed to and/or hastened the miner’s death, but only indicated that the miner died due to cardiopulmonary arrest due to cirrhosis on the miner’s death certificate, *see* Director’s Exhibit 5. *See Tackett v. Director, OWCP*, 7 BLR 1-703 (1985). Dr. Walter also did not provide any opinion as to whether pneumoconiosis contributed to and/or hastened the miner’s death, *see Tackett, supra*. Moreover, the administrative law judge’s crediting of Dr. Aguilar’s opinion is inconsistent with his discrediting of the miner’s death certificate, which the administrative law judge apparently failed to recognize was also completed by Dr. Aguilar, *see Revnack v. Director, OWCP*, 7 BLR 1-771 (1985); *see also Wike v. Bethlehem Mines Corp.*, 7 BLR 1-593 (1984).

Next, the administrative law judge found the opinion of Dr. Mapel, who reviewed the evidence and found that coal workers’ pneumoconiosis was a major contributing factor in the miner’s death, Claimant’s Exhibit 6, was documented and reasoned, Decision and Order at 13. However, the administrative law judge assigned less weight to the contrary opinion of Dr. Altmeyer, who also reviewed the evidence and found no evidence that the miner’s death was due to pneumoconiosis, Director’s Exhibit 16; Employer’s Exhibits 1-2. The administrative law judge gave less weight to Dr. Altmeyer’s opinion because the administrative law judge found that he had based his opinion “primarily” on his finding that the miner did not have pneumoconiosis, which the administrative law judge found was not supported by the evidence of record. In addition, the administrative law judge found that Dr. Altmeyer’s opinion that coal workers’ pneumoconiosis “too mild to show up radiographically has never been shown to be a significant factor contributing to death,” Director’s Exhibit 16, or to “cause any significant impairment,” Employer’s Exhibit 1, was contrary to the Act and not supported by the evidence of record. The administrative law judge ultimately concluded

that the opinions of Dr. Aguilar and Mapel outweighed Dr. Altmeyer's opinion, Decision and Order at 14.

As employer contends and contrary to the administrative law judge's finding, Dr. Aguilar stated that even assuming the miner did have pneumoconiosis, he still believed that the miner's death was not due to pneumoconiosis, *see* Employer's Exhibits 1-2. *See Tackett, supra*. Moreover, Dr. Altmeyer's opinion merely states that coal workers' pneumoconiosis that does not appear on an x-ray does not cause "significant" impairment, but does not preclude all possibility that simple pneumoconiosis can be totally disabling. Thus, Dr. Altmeyer's opinion is not in conflict with the Act, *see Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1981); *Walker v. Brown Badgett, Inc.*, 8 BLR 1-220 (1985); *Butela v. United States Steel Corp.*, 8 BLR 1-48 (1985); *Cunningham v. Pittsburg & Midway Coal Co.*, 7 BLR 1-93 (1984); *see also Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997).

Finally, the administrative law judge found that other medical evidence of record indicated that pneumoconiosis contributed to and/or hastened the miner's death, Decision and Order at 14. The administrative law judge noted that the miner had been diagnosed with cor pulmonale, congestive heart failure, as well as right sided heart failure, and found the record absent of evidence which contradicts these findings. The administrative law judge also found that Dr. Aguilar had documented congestive heart failure as a cause of death in his death summary. The administrative law judge stated that the regulations at 20 C.F.R. §718.204 recognize cor pulmonale with right-sided congestive heart failure as a condition "arising from pneumoconiosis," *id.*, and found that the record did not indicate any other cause for the miner's respiratory condition and congestive heart failure other than pneumoconiosis. The administrative law judge concluded that "there is sufficient medical data which causally relates [the miner's] heart condition to pneumoconiosis," and that the miner "died from a heart condition, no etiology, other than cirrhosis was provided, he worked for a significant amount of time in the coal mines, and the medical data is inundated with documentation of respiratory conditions" [*sic*], *id.*

Contrary to the administrative law judge's finding that there is no evidence contradicting the findings of cor pulmonale, congestive heart failure and right sided heart failure, Dr. Altmeyer reviewed the evidence and found no evidence of cor pulmonale, *see* Employer's Exhibit 2; *Tackett, supra*. Moreover, 20 C.F.R. §718.204(c)(3) does not recognize cor pulmonale with right-sided congestive heart failure as necessarily a condition arising from pneumoconiosis, but only as evidence of total respiratory disability, *see* 20 C.F.R. §718.204(c)(3). In any event, as employer contends, if medical opinions diagnosing cor pulmonale do not also diagnose right-sided congestive heart failure, they are insufficient to demonstrate total disability under Section 718.204(c)(3), *see Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989).

Next, as employer contends and contrary to the administrative law judge's finding, although Dr. Aguilar completed a "Death Summary" listing congestive heart failure as a "secondary" diagnosis, Director's Exhibit 6, Dr. Aguilar did not opine that congestive heart failure or pneumoconiosis contributed to and/or hastened the miner's death, but only indicated in the miner's death certificate, that the miner died due to cardiopulmonary arrest due to cirrhosis *see* Director's Exhibit 5, *see Tackett, supra*. In addition, as employer contends and contrary to the administrative law judge's finding, although the administrative law judge found no cause other than pneumoconiosis indicated in the record for the miner's respiratory condition and congestive heart failure, a review of the record indicates that Dr. Sikder, *see* Director's Exhibit 6, and Dr. Altmeyer, *see* Employer's Exhibit 2, related the miner's congestive heart failure to cardiomyopathy, *see Tackett, supra*. Finally, there is no evidence in the record specifically relating the miner's death to cor pulmonale, congestive heart failure, right sided heart failure or a heart condition, but only to cardiorespiratory arrest and cirrhosis, *see Tackett, supra*. Dr. Aguilar found the miner's death was due to cardiorespiratory arrest due to cirrhosis, Director's Exhibit 5, and Dr. Mapel merely found that the miner's coal workers' pneumoconiosis contributed to his death by cirrhosis and cardiorespiratory arrest, Claimant's Exhibit 6, whereas Dr. Altmeyer found no evidence that pneumoconiosis contributed to the miner's death, Director's Exhibit 16; Employer's Exhibits 1-2.

Although the weighing of the evidence is for the administrative law judge, the interpretation of medical evidence is a medical determination for which an administrative law judge may not substitute his own opinion, *see Schetroma v. Director, OWCP*, 18 BLR 1-19 (1993); *Castle v. Eastern Associated Coal Co.*, 12 BLR 1-105 (1988); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986), nor may he selectively analyze the evidence, *see Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Wright v. Director, OWCP*, 7 BLR 1-475 (1984). Moreover, the administrative law judge's analysis of the evidence of record and credibility determinations under Section 718.205(c) are irrational and inconsistent, *see Revnack, supra; see also Wike, supra*.

Consequently, we vacate the administrative law judge's finding that death due to pneumoconiosis was established pursuant to Section 718.205(c), inasmuch as the administrative law judge failed to properly resolve the conflicts in the evidence of record, *see Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989), and remand the case for reconsideration and further explanation, *see Tanner v. Freeman United Coal Co.*, 10 BLR 1-85 (1987); *McGinnis v. Freeman United Coal Mining Co.*, 10 BLR 1-4 (1987). On remand, the administrative law judge must provide a full, detailed opinion which complies with the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(a), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), and which fully explains the

specific bases for his decision, the weight assigned to the evidence and the relationship he finds between the evidence and his legal and factual conclusions, *see Tenney v. Badger Coal Co.*, 7 BLR 1-589 (1984), and should resolve the inconsistency in his weighing of Dr. Aguilar's opinion when reconsidering the relevant medical opinion evidence, *see Revnack, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge