

BRB No. 03-0514 BLA

HARRIET J. ANDERSON)
(Widow of GORDON R. ANDERSON))
)
Claimant-Respondent)
)
v.)
)
VALLEY CAMP COAL COMPANY)
) DATE ISSUED: 04/30/2004
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 on Third Remand-Awarding Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals the Decision and Order on Third Remand-Awarding Benefits (1998-BLA-0445) of Administrative Law Judge Thomas F. Phalen, Jr., rendered 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 This case

¹ 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.

is before the Board for the third time. The miner died on February 6, 1997 and claimant filed her application for survivor's benefits on March 14, 1997.² Director's Exhibit 1.

Initially, the administrative law judge credited the miner with twenty-two and one-half years of coal mine employment,³ found that the existence of pneumoconiosis was established by the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1)(2000), and found that the pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b)(2000). The administrative law judge additionally found that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2000), and accordingly, he awarded benefits. Upon consideration of employer's appeal, the Board affirmed as unchallenged the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1)(2000), 718.203(b)(2000), but vacated his finding that the miner's death was due to pneumoconiosis and remanded the case for further consideration of the issue. *Anderson v. Valley Camp Coal Co.*, BRB No. 99-0688 BLA (Apr. 5, 2000)(unpub.).

On remand, the administrative law judge again found that the miner's death was due to pneumoconiosis. In so finding, he credited the opinion of Dr. Mapel: that the miner had severe pneumoconiosis which caused a series of complications leading to death, and that the miner had a severe impairment from pneumoconiosis which diminished his ability to survive the multi-system failure he suffered. Claimant's Exhibit 6. Accordingly, the administrative law judge awarded benefits.

Upon review of employer's appeal, the Board vacated the administrative law judge's findings and instructed him to consider and resolve conflicts in the evidence. *Anderson v. Valley Camp Coal Co.*, BRB No. 01-0607 BLA (Jun. 26, 2002)(unpub.). The Board instructed the administrative law judge to weigh the evidence contrary to Dr. Mapel's opinion that the miner's pneumoconiosis was severe, most notably, Dr. Altmeyer's opinion that the miner had only a mild respiratory impairment. [2002] *Anderson*, slip op. at 6; Director's Exhibit 16; Employer's Exhibits 1, 2. The Board also instructed the administrative law judge that before he could credit Dr. Mapel's opinion that severe pneumoconiosis caused a chain of fatal complications, he had to weigh the conflicting evidence as to each complication that Dr. Mapel diagnosed and Dr. Altmeyer

² At the time of the miner's death, he was receiving benefits for total disability due to pneumoconiosis pursuant to a final award on his claim filed in 1989. Director's Exhibit 20.

³ The record indicates that the miner's coal mine employment occurred in West Virginia. Director's Exhibits 3, 19, 20. 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*).

denied was present. Specifically, the Board instructed the administrative law judge to consider all of the relevant evidence and determine whether the miner had cor pulmonale, right-sided congestive heart failure, and cardiac cirrhosis,⁴ as stated by Dr. Mapel. [2002] *Anderson*, slip op. at 6-8. Additionally, the Board instructed the administrative law judge to provide valid reasons for crediting or discrediting the medical opinions. [2002] *Anderson*, slip op. at 9-10. Accordingly, the Board remanded the case for further consideration.

On remand, the administrative law judge found that the weight of the evidence better supported Dr. Mapel's opinion that the miner had a severe impairment due to pneumoconiosis demonstrated by pulmonary function studies, and thus supported Dr. Mapel's opinion that the miner's pneumoconiosis was severe. The administrative law judge found Dr. Mapel's opinion as to the cause of death to be well reasoned and better supported by the medical evidence of record than Dr. Altmeyer's contrary opinion. The administrative law judge credited Dr. Mapel's opinion that the miner's severe impairment from pneumoconiosis made it more difficult for him to withstand multi-system failure. Decision and Order on Third Remand at 15-16. The administrative law judge also found that the weight of the evidence supported Dr. Mapel's opinion that the miner's pneumoconiosis caused cor pulmonale with right-sided congestive heart failure, which caused cardiac cirrhosis, which in turn caused gastrointestinal bleeding and death. Decision and Order on Third Remand at 14-16. Accordingly, the administrative law judge found that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), and he awarded benefits.

On appeal, employer contends that the administrative law judge erred in his analysis of the evidence when he found that the miner's death was due to pneumoconiosis. Claimant has not responded to employer's appeal, and the Director, Office of Workers' Compensation Programs (the Director), has declined to participate in the 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had

⁴ "Cardiac cirrhosis" means "fibrosis of the liver . . . in association with congestive heart disease." *Dorland's Illustrated Medical Dictionary* 322 (25th ed. 1974).

pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. See 20 C.F.R. §718.205(a)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis 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)(2), (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); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 979-80, 16 BLR 2-90, 2-92-93 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

The miner died in the hospital on February 6, 1997. Director's Exhibit 6. No autopsy was performed. The miner's death certificate, which was completed by his treating physician, Dr. Aguilar, listed the cause of death as "cardiorespiratory arrest" due to or as a consequence of "cirrhosis." Director's Exhibit 5. Dr. Aguilar, who treated the miner during his final hospitalization, completed a Death Summary in which he described a "complicated" hospital course, and diagnosed esophageal varices and bleed, stomach ulcer hemorrhage, blood loss anemia, diabetes, ascites, cirrhosis of the liver, azotemia, congestive heart failure, and arteriosclerotic heart disease. Director's Exhibit 6. Under the heading "Additional Problems," Dr. Aguilar included "[r]espiratory insufficiency" and "acute respiratory failure." *Id.* Subsequently, Dr. Aguilar wrote a letter stating that pneumoconiosis "played a part of [the miner's] multisystem disease." Director's Exhibit 11.

Two medical opinions addressed whether pneumoconiosis caused or hastened the miner's death. Dr. Mapel, who is Board-certified in Internal Medicine, Pulmonary Disease, and Critical Care, reviewed the miner's medical records and concluded that the miner had severe pneumoconiosis, which caused cor pulmonale and right-sided heart failure, which led to cardiac cirrhosis, which in turn caused gastrointestinal bleeding and death. Claimant's Exhibit 6. Dr. Mapel also noted that during the miner's final hospitalization he "developed multisystem failure with respiratory insufficiency," and opined that the miner's severe pneumoconiosis with "severe respiratory impairment certainly would have made it much more difficult for him to withstand the effects of his multisystem failure." Claimant's Exhibit 6 at 11. By contrast, Dr. Altmeyer, who is Board-certified in Internal Medicine, Pulmonary Disease, Critical Care, and Geriatric Medicine, reviewed the miner's medical records and concluded that, assuming the miner had pneumoconiosis, it was too mild to cause or hasten his death. Director's Exhibit 16; Employer's Exhibits 1, 2. Dr. Altmeyer opined that the miner did not have cor pulmonale

with right-sided heart failure but rather, had left-sided heart failure unrelated to coal dust exposure, and that he died of conditions unrelated to pneumoconiosis. *Id.*

Employer contends that the administrative law judge erred in finding that Dr. Mapel's diagnosis of severe pneumoconiosis was supported by Dr. Mapel's opinion that pulmonary function studies administered on October 27, 1989 and February 22, 1990 reflected a severe impairment. Employer argues that the administrative law judge did not supply a valid reason for crediting Dr. Mapel's interpretation of the studies over Dr. Altmeyer's contrary interpretation.

The administrative law judge provided a valid reason for crediting Dr. Mapel's opinion and for declining to credit Dr. Altmeyer's opinion. Dr. Mapel interpreted the pulmonary function studies, which were qualifying,⁵ as reflecting a severe impairment based on American Thoracic Society interpretation criteria for FEV1 and FVC values. Claimant's Exhibit 6 at 11. Dr. Altmeyer opined that if the FEV1/FVC ratio were considered, the tests showed only mild obstruction. Employer's Exhibit 1 at 4; Employer's Exhibit 2 at 28-32. The administrative law judge, within his discretion as the fact-finder, found Dr. Mapel's opinion more credible because he relied on "the standards set forth by the American Thoracic Society" to interpret the FEV1 and FVC values, and Dr. Altmeyer did not specifically address or criticize Dr. Mapel's reliance on the American Thoracic Society criteria. Decision and Order on Third Remand at 13; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998)(holding that the administrative law judge must assess the quality of a physician's reasoning); *Walker v. Director, OWCP*, 927 F.2d 181, 184 n.6, 15 BLR 2-16, 2-24 (4th Cir. 1991)(describing the American Thoracic Society as "a prestigious body"); *cf. Vargo v. Valley Camp Coal Co.*, 7 BLR 1-901, 1-903 n.1 (1985)(holding that a physician may rely upon American Medical Association criteria to assess respiratory impairment). As for Dr. Altmeyer's reliance on the FEV1/FVC ratio, the administrative law judge was not bound to accept the opinion that the FEV1/FVC ratio should be used rather than individual FEV1 and FVC values to assess impairment, *see Underwood v. Elkay Mining Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-2-28 (4th Cir. 1997), and the record supports the administrative law judge's finding that Dr. Altmeyer cited no specific medical literature stating that FEV1/FVC must be used. Decision and Order on Third Remand at 13. Therefore, we reject employer's allegation that the administrative law judge provided

⁵ A "qualifying" pulmonary function study yields values equal to or less than those listed in the tables at 20 C.F.R. Part 718, Appendix B. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i).

invalid reasons for crediting Dr. Mapel's opinion that the miner's pulmonary function studies reflected a severe impairment.⁶

Employer contends that the administrative law judge ignored other pulmonary function and physical findings contrary to a finding of severe pneumoconiosis. Employer argues that the administrative law judge did not consider Dr. Wright's interpretation of a February 13, 1989 pulmonary function study as revealing a mild obstructive defect and moderate small airways disease, Claimant's Exhibit 5, and did not consider examining physicians' findings of clear lungs, noted by Dr. Altmeyer.

Contrary to employer's contention, the administrative law judge did not overlook relevant evidence in crediting Dr. Mapel's opinion. Dr. Mapel reviewed the February 13, 1989 pulmonary function study and stated that it "confirmed" the results of the October 27, 1989 and February 22, 1990 studies, which he explained reflected a severe impairment. Claimant's Exhibit 6 at 9, 11. As discussed above, the administrative law judge permissibly credited Dr. Mapel's interpretation of the October 1989 and February 1990 pulmonary function studies. Additionally, Dr. Mapel considered all the miner's treatment records and explained that he incorporated them into his evaluation of the miner's medical condition. Claimant's Exhibit 6 at 9. In so doing, Dr. Mapel identified abnormal findings that were detected on examination of the miner's lungs. *Id.* An administrative law judge may rely on a documented and reasoned medical judgment. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21-22 (1987). Moreover, in assessing an opinion's reasoning, an administrative law judge is not required to compare the opinion with each piece of medical data in the record, but rather, must determine if the report's underlying documentation adequately supports the doctor's conclusions. *Trumbo*, 17 BLR at 1-89 n.4. In this case, the administrative law judge found that Dr. Mapel's opinion was well documented and reasoned, and substantial evidence supports that discretionary finding. Since Dr. Mapel reviewed and interpreted all of the pertinent medical data, the administrative law judge was entitled to rely on his opinion. *See Fields*, 10 BLR at 1-21-22. Consequently, we reject employer's argument that the administrative law judge ignored relevant evidence in crediting Dr. Mapel's opinion that the miner's pneumoconiosis was severe.

Employer contends that the administrative law judge failed to consider all relevant evidence, and made several errors in his analysis of the evidence when he credited Dr.

⁶ Because the administrative law judge supplied a valid reason for his weighing of the medical opinions on this point, we need not address employer's additional arguments that the administrative law judge erred in crediting Dr. Mapel's interpretation of the pulmonary function studies. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983).

Mapel's opinion that the miner's severe pneumoconiosis caused cor pulmonale with right-sided congestive heart failure, which caused cardiac cirrhosis, which in turn caused gastrointestinal bleeding and death. We need not address these contentions, because the administrative law judge also credited Dr. Mapel's alternative theory, which was that the miner's severe respiratory impairment from pneumoconiosis "made it much more difficult [for him] to withstand the effects of his multisystem failure."⁷ Claimant's Exhibit 6 at 11. Pneumoconiosis need only hasten death to be considered a substantially contributing cause or factor leading to death. 20 C.F.R. §718.205(c)(5); *Shuff*, 967 F.2d at 979-80, 16 BLR at 2-92-93. There is no dispute between Drs. Altmeyer and Mapel that during the miner's lengthy, final hospitalization he experienced failure of multiple body systems, culminating in cardiorespiratory arrest. Director's Exhibits 5, 6. The administrative law judge applied the "hasten death" standard, Decision and Order on Third Remand at 12, and credited as well reasoned and supported Dr. Mapel's opinion that pneumoconiosis hastened the miner's death by weakening his ability to withstand multisystem failure. Dr. Altmeyer's reason that pneumoconiosis did not hasten death was that the miner's pneumoconiosis, assuming it existed, was too mild to hasten death. Director's Exhibit 16; Employer's Exhibits 1, 2. But the administrative law judge permissibly credited Dr. Mapel's view that the miner's pneumoconiosis was severe enough to cause a severe level of impairment in pulmonary function. In reaching his decision, the administrative law judge discussed the relative qualifications of the physicians and assessed the quality of their reasoning.⁸ Decision and Order on Third Remand at 13-16; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Trumbo*, 17 BLR at 1-88-89 and n.4. Substantial evidence supports the administrative law judge's findings, which are in accordance with law. Accordingly, we affirm the administrative law judge's finding that pneumoconiosis hastened the miner's death pursuant to Section 718.205(c)(5) and that claimant is therefore entitled to benefits.

⁷ Dr. Mapel specified that the severe impairment seen on the miner's pulmonary function studies "was caused by his exposure to coal dust." Claimant's Exhibit 6 at 11.

⁸ On appeal, employer does not challenge the administrative law judge's determination that Drs. Mapel and Altmeyer are equally qualified.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge