BRB No. 09-0450 BLA

MARTHA WEST CHILDRESS (Widow of JAMES WEST)	)	
Claimant-Respondent	)	
v.	)	
N.O.W. COAL COMPANY	)	
	)	DATE ISSUED: 04/14/2010
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 Remand of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals the Decision and Order on Remand (2007-BLA-05136) of Administrative Law Judge Daniel F. Solomon awarding benefits with respect to a survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act).[1] This case is before the

[1] The recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, do not apply to the instant case, as it was filed prior to January 1, 2005.

Board for a second time.[2] In *M.M.W.* [*West*] *v. N.O.W. Coal Co.*, BRB No. 07-0943 BLA (Aug. 22, 2008)(unpub.), the Board held that the administrative law judge did not properly weigh the medical opinion evidence regarding the issue of death causation under 20 C.F.R. §718.205(c), because he did not initially determine whether claimant had established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). The Board also determined that, pursuant to 20 C.F.R. §718.205(c), the administrative law judge did not adequately compare the physician's credentials and improperly discounted Dr. Fino's opinion. Based on these holdings, the Board vacated the administrative law judge's findings that claimant established modification under 20 C.F.R. §725.310 and death due to pneumoconiosis under 20 C.F.R. §718.205(c). The Board remanded the case to the administrative law judge for reconsideration and instructed the administrative law judge to make an explicit determination as to whether granting claimant's modification request would render justice under the Act, if he determined that claimant proved that pneumoconiosis was a contributing cause of the miner's death.

On remand, the administrative law judge concluded that Dr. Perper's opinion was sufficient to establish the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge also determined, pursuant to 20 C.F.R. §718.205(c), that claimant established that the miner's pneumoconiosis significantly contributed to the symptoms of amyotrophic lateral sclerosis (ALS) and accelerated the miner's death. Further, the administrative law judge determined that because claimant acted in good faith in seeking modification of her initial claim, granting her request would render justice under the Act. Accordingly, the administrative law judge awarded benefits.

Employer appeals, arguing that the administrative law judge did not comply with the Board's instructions in finding that claimant established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). In addition, employer asserts that the

[2] Claimant is the surviving spouse of the miner, James West, who died on December 14, 2003. Director's Exhibit 7. Claimant filed her survivor's claim on February 5, 2004. Director's Exhibit 2. Claimant subsequently remarried and her last name is now Childress. 2007 Decision and Order at 2-3. The district director issued a Proposed Decision and Order denying benefits on September 14, 2004. Director's Exhibit 28. On August 31, 2005, claimant requested modification of the district director's denial and submitted additional medical evidence in support of her request. Director's Exhibit 32. On July 19, 2006, the district director issued a Proposed Decision and Order granting claimant's request for modification and awarding benefits. At employer's request, the matter was forwarded to the Office of Administrative Law Judges for a formal hearing, which was convened on April 25, 2007. Directors Exhibits 47, 48. At the hearing, however, the parties agreed to waive their rights to a formal hearing, in favor of several telephone conferences and a decision on the record.

administrative law judge did not properly weigh the evidence relevant to the issue of death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a response 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).

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 was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2), (4). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Bill Branch Coal Co. 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).

I. The Administrative Law Judge's Findings on Remand

The administrative law judge first addressed the evidence relevant to the cause of the miner's death, which consisted of the death certificate and reports submitted by Drs. Segen, Perper, Crouch and Fino. On the death certificate, Dr. Reinhart identified ALS as the primary cause of the miner's death and indicated that hypertension was a significant contributing condition. Director's Exhibit 7. Dr. Segen performed the autopsy and diagnosed moderate coal workers' pneumoconiosis (CWP), noting the presence of dust macules surrounded by focal emphysema, but did not offer an opinion as to the cause of the miner's death. Director's Exhibit 8.

Dr. Perper reviewed seventeen slides from the autopsy and noted the presence of pneumoconiotic micronodules scattered throughout the parenchyma, measuring from one to three millimeters, and macronodules throughout the parenchyma, measuring up to eight millimeters. Director's Exhibit 35. Based on these observations, Dr. Perper diagnosed moderately severe simple CWP. *Id.* Dr. Perper also diagnosed chronic

obstructive pulmonary disease (COPD), "on a background of moderate centrilobular emphysema," and stated that these conditions were related to smoking and coal dust exposure. *Id*. Dr. Perper determined that the miner's CWP and "complicating centrilobular emphysema and terminal pneumonia (the latter a complication also due to ALS) was a substantial contributing cause and a hastening factor in his death[.]" *Id*.

Dr. Crouch reviewed slides from the miner's autopsy, noted the presence of "small numbers of coal dust macules," and observed that "coal dust-related lesions account for less than five percent of the examined parenchyma." Employer's Exhibit 5. Dr. Crouch also noted, "there is emphysema [but] the changes are mild and the histologic patterns do not indicate coal mine dust with the exception of a few areas of focal emphysema." *Id*. Dr. Crouch concluded that the miner had simple CWP that was "far too mild to have caused any clinically significant degree of respiratory impairment or disability and could not have caused, contributed to [or] otherwise hastened the miner's death." *Id*.

Dr. Fino reviewed the miner's medical records and stated that the miner had CWP and suffered from a mild respiratory impairment due to ALS. Employer's Exhibit 6. Dr. Fino concluded that CWP "played absolutely no role whatsoever in [the miner's] disability and death." *Id*.

The administrative law judge initially determined that Dr. Perper's diagnosis of moderately severe CWP was entitled to greater weight than Dr. Crouch's diagnosis of mild CWP. The administrative law judge noted that, in contrast to Dr. Crouch, Dr. Perper set forth precise measurements of the size of the micronodules and macronodules that he observed and discussed the impact that the miner's CWP had on his ALS. Decision and Order on Remand at 5-6. In addition, the administrative law judge dismissed Dr. Crouch's critique of Dr. Perper's reliance on articles describing the effects of severe pneumoconiosis and stated, "the law does not require a finding of 'severe' pneumoconiosis as there may be several causes of death." *Id*. at 6. The administrative law judge also indicated that Dr. Perper's identification of pneumoconiosis as a contributing cause of the miner's death was more consistent with the Department of Labor's view, that persons weakened by pneumoconiosis may expire more quickly from other diseases. *Id*., *citing* 65 Fed. Reg. 79,950 (Dec. 20, 2000). The administrative law judge concluded that "Dr. Perper's rationale is more thorough, better documented and better reasoned than that of Dr. Crouch." Decision and Order on Remand at 7.

With respect to Dr. Fino's opinion, the administrative law judge determined that it was entitled to little weight because Dr. Fino "did not address whether there was a relationship between ALS and mining exposure." Decision and Order on Remand at 7. The administrative law judge found that Dr. Fino's "rationale" was not as well reasoned as Dr. Perper's and, therefore, his opinion was entitled to less weight. *Id*.

The administrative law judge then discussed the definition of legal pneumoconiosis set forth in 20 C.F.R. §718.201(a)(2) and noted that, although Drs. Segen and Crouch reported the presence of emphysema, Dr. Fino did not address whether emphysema had any effect on the miner's respiratory capacity or his death in his review of the medical evidence.[3] Decision and Order on Remand at 8. The administrative law judge further indicated that, in contrast, Dr. Perper "sufficiently addressed 'aggravation' of the emphysema." *Id*. The administrative law judge found that "regardless of whether or not there has been a diagnosis of legal pneumoconiosis during the [m]iner's lifetime, [Dr. Perper's] opinion is consistent with the record." *Id*. The administrative law judge concluded that "[a]fter a review of all of the record, I find that Dr. Perper also rendered a reasoned medical opinion that [coal dust] exposure aggravated the emphysema and that constitutes 'legal' pneumoconiosis." *Id*. at 9. The administrative law judge then determined that Dr. Perper's opinion, that pneumoconiosis aggravated the miner's ALS and hastened his death, satisfied claimant's burden of proving death due to pneumoconiosis at 20 C.F.R. §718.205(c). *Id*.

II. Arguments on Appeal

Employer asserts that the administrative law judge did not comply with the Board's remand instructions or the requirements of the Administrative Procedure Act (APA), 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), 30 U.S.C. §932(a), as he did not properly consider the issue of the existence of legal pneumoconiosis under 20 C.F.R. §718.202(a)(4).[4] Employer also maintains that the administrative law judge erred in finding that Dr. Perper's opinion was sufficient to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c), as Dr. Perper's opinion was not sufficiently documented or reasoned.

[3] Legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[4] The Administrative Procedure Act requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record." 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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

III. Analysis

A. Legal Pneumoconiosis

Contrary to employer's argument, the administrative law judge acted within his discretion as fact-finder in determining that Dr. Perper's opinion contained diagnoses of both clinical and legal pneumoconiosis, as Dr. Perper diagnosed CWP, based on the pathology evidence, and attributed the miner's centrilobular emphysema, in part, to coal dust exposure. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212, 22 BLR 2-162, 2-176 (4th Cir. 2000); 20 C.F.R. §718.201(a); Decision and Order on Remand at 8; Director's Exhibit 35. Employer asserts correctly, however, that the administrative law judge did not resolve the conflict in the medical opinions of record, nor did he adequately address whether Dr. Perper's diagnosis of legal pneumoconiosis was documented and reasoned.

As employer maintains, the administrative law judge summarily credited Dr. Perper's diagnosis of centrilobular emphysema due, in part, to coal dust exposure without considering the contrary opinions of Drs. Segen, Crouch and Fino.[5] Decision and Order on Remand at 8-9. In addition, the administrative law judge referenced the pulmonary function studies obtained by Drs. Forehand and Robinette, but did not address whether the opinions of Drs. Fino and Robinette, regarding the validity of the studies and the source of the impairments that they allegedly revealed, contradicted Dr. Perper's diagnosis of legal pneumoconiosis. *Id*. at 4, 7. Dr. Robinette indicated that the study that he obtained showed a restrictive impairment caused by ALS. Employer's Exhibit 1. Dr. Fino stated that the study obtained by Dr. Forehand was invalid due to lack of effort and did not show any obstruction.[6] Employer's Exhibit 6. Dr. Fino reviewed Dr. Robinette's study and, based on the assumption that the study was valid, indicated that it showed a restrictive defect caused by ALS. Employer's Exhibits 1, 6.

[5] Dr. Segen noted the presence of focal emphysema. Director's Exhibit 8. Dr. Crouch stated, "there is emphysema [but] the changes are mild and the histologic patterns do not indicate coal mine dust with the exception of a few areas of focal emphysema." Employer's Exhibit 5. Dr. Crouch also observed that any respiratory impairment suffered by the miner was not due to pneumoconiosis or coal dust exposure. *Id*. Dr. Fino ruled out the presence of "a respiratory impairment related to any intrinsic lung disease." Employer's Exhibit 6.

[6] The administrative law judge stated: "In 2002, Dr. Forehand found a respiratory deficit but determined that chronic obstructive pulmonary disorder was the basis. However, this report is not part of the enumerated exhibits in this record and I only note that they exist." Decision and Order at 4.

Furthermore, although the administrative law judge noted that Dr. Fino did not adequately explain his opinion in light of the miner's histories of smoking and coal dust exposure, the Board previously held that the administrative law judge's decision to discredit Dr. Fino's opinion on this ground was not supported by substantial evidence.[7] *West*, slip op. at 9. It was also irrational for the administrative law judge to discredit Dr. Fino's opinion, for failing to address whether emphysema had any impact on the miner's respiratory capacity, where the administrative law judge has not made a proper finding as to whether miner suffered from emphysema due, in part, to coal dust exposure. *See Id*.; Decision and Order on Remand at 8.

Because the administrative law judge did not explain the basis for his conclusion that the miner had centrilobular emphysema or a respiratory impairment related to coal dust exposure, we must vacate the administrative law judge's finding that claimant established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4).[8] *See*

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[7] The Board stated:

> Dr. Fino specifically acknowledged that the miner exhibited a respiratory impairment, as documented by Dr. Robinette, but opined that this impairment was due to ALS and not to any coal dust-related condition. In addition, Dr. Fino explained the mechanism by which ALS causes respiratory impairment, as did Dr. Robinette. In addition, Dr. Fino noted that there was no evidence in the treatment records that the miner was clinically diagnosed with any coal dust-related impairment during his lifetime, and Dr. Robinette himself did not attribute the respiratory impairment that he measured to coal dust exposure. Thus, given the absence of any impairment in lung function due to coal dust exposure, Dr. Fino concluded that there was no evidence that coal mine dust inhalation caused, contributed to, or hastened the miner's death.

M.M.W. [*West*] *v. N.O.W. Coal Co.*, BRB No. 07-0943 BLA, slip op. at 9 (Aug. 22, 2008)(unpub.).

[8] We reject employer's request that we reverse the administrative law judge's finding that claimant established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). Because there are conflicting medical opinions on this issue, it is the role of the administrative law judge to make credibility determinations with respect to this evidence and resolve the conflicts. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997).

Sparks, 213 F.3d at 190, 22 BLR at 2-259; *Compton*, 211 F.3d at 212, 22 BLR at 2-176; *Shuff*, 967 F.2d at 979-80, 16 BLR at 2-92-93.

On remand, the administrative law judge must first reconsider whether claimant has established the existence of legal pneumoconiosis by a preponderance of the medical evidence. In so doing, the administrative law judge must be mindful that, because clinical and legal pneumoconiosis have distinct regulatory definitions, evidence that one condition exists is not necessarily evidence that the other condition also exists. 20 C.F.R. §718.201(a)(1), (2), (b). When assessing the probative value of the medical opinions, therefore, the administrative law judge must determine whether a physician has provided a documented and reasoned diagnosis of a pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." [9] 20 C.F.R. §718.201(b); *see Milburn Colliery v. Hicks*, 138 F.3d 524, 524, 21 BLR 2-323 (4th Cir. 1998); *Compton*, 211 F.3d at 212, 22 BLR at 2-176; *Clay v. Director, OWCP*, 7 BLR 1-82, 84 (1984). A documented opinion is one in which the physician sets forth the clinical findings, observations, facts and other data that provide the bases for his or her conclusions. *See Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). A reasoned opinion is one in which the underlying documentation supports the physician's conclusions. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The administrative law judge must set forth his findings on remand in detail, including the underlying rationales, in accordance with the APA.[10] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

B. Death Due to Pneumoconiosis

Because we have vacated the administrative law judge's crediting of Dr. Perper's diagnosis of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), we must also vacate his

[9] Although the Department of Labor has acknowledged that there is a consensus among scientists that coal dust exposure can cause obstructive lung disease, claimant still retains the burden of proving that this has occurred in the miner's case. 20 C.F.R. §718.201(a)(2); 65 Fed. Reg. 79,938, 79,943 (Dec. 20, 2000); *see Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 23 BLR 2-124 (D.C. Cir. 2002), *aff'g in part and rev'g in part Nat'l Mining Ass'n v. Chao*, 160 F. Supp.2d 47 (D.D.C. 2001)

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[10] Employer reiterates the argument rejected by the Board in its previous Decision and Order regarding Dr. Perper's reliance on a longer coal mine employment history than that credited by the administrative law judge. Because employer has not set forth any compelling argument for altering the Board's prior disposition, it now constitutes the law of the case and we decline to disturb it. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

finding that Dr. Perper's opinion was sufficient to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c). To promote judicial efficiency, however, we will address employer's allegations of error regarding the administrative law judge's consideration of the evidence relevant to death causation at 20 C.F.R. §718.205(c).

We hold that there is no merit in employer's argument that the administrative law judge erred in referring to the preamble to the amended regulations. The preamble to the amended regulations sets forth how the Department of Labor has chosen to resolve questions of scientific fact. *See Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 23 BLR 2-18 (7th Cir. 2004). An administrative law judge may evaluate expert opinions, therefore, in conjunction with the Department of Labor's discussion of sound medical science in the preamble to the amended regulations. *See Zeigler Coal Co. v. Kerr* [*Griskell*], 240 F.3d 572, 22 BLR 2-247 (7th Cir. 2000), *citing Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483 n.7, 22 BLR 2-265, 2-281 n.7 (7th Cir. 2001). In addition, contrary to employer's suggestion, the preamble does not constitute evidence outside the record with respect to which the administrative law judge must give notice and an opportunity to respond. *See Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135, 139 (1990). Accordingly, we hold that the administrative law judge did not err in discussing the preamble to the amended regulations when weighing the medical opinions relevant to the issue of death due to pneumoconiosis. We note, however, that the positions set forth by the Department of Labor in the preamble do not create a presumption relieving claimant of the burden of proving, by a preponderance of the medical evidence, that pneumoconiosis was a contributing cause of the miner's death in this particular case. *See Nat'l Mining Ass'n v. Dep't of Labor* [*NMA*], 292 F.3d 849, 23 BLR 2-124 (D.C. Cir. 2002), *aff'g in part and rev'g in part Nat'l Mining Ass'n v. Chao*, 160 F. Supp.2d 47 (D.D.C. 2001)(Claimant retains the burden of proving that pneumoconiosis hastened the miner's death, as 20 C.F.R. §718.205(c)(5) does not mandate that pneumoconiosis be regarded as a hastening cause of death, but only describes circumstances under which pneumoconiosis may be found to have hastened death).

We also reject employer's argument that the administrative law judge did not properly resolve the conflict between Dr. Crouch's opinion and Dr. Perper's opinion as to the severity of the miner's clinical pneumoconiosis. Dr. Perper diagnosed moderately severe simple CWP, based on the presence of pneumoconiotic micronodules scattered throughout the parenchyma, measuring from one to three millimeters and macronodules throughout the parenchyma, measuring up to eight millimeters. Director's Exhibit 35. Dr. Crouch diagnosed mild simple CWP, based on her observation that "coal dust-related lesions account for less than five percent of the examined parenchyma." Employer's Exhibit 5. The administrative law judge acted within his discretion as fact-finder in determining that Dr. Perper's diagnosis was more persuasive, as he provided specific details concerning the size and extent of the micronodules and macronodules of

pneumoconiosis that he observed. *See Compton*, 211 F.3d at 211, 22 BLR at 2-175; *Grizzle v. Pickands Mather & Co./Chisolm Mines*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993). The administrative law judge also acted within his discretion as fact-finder in concluding, based upon his crediting of Dr. Perper's diagnosis of moderately severe simple CWP, that the probative value of Dr. Crouch's opinion, that the miner's CWP was too mild to have played any role in his death, was entitled to diminished weight because the basis of her opinion, that the miner's CWP was mild, was called into question.[11] Decision and Order on Remand at 6. *Id*.

Employer also argues that the administrative law judge did not properly weigh the opinions of Drs. Perper and Fino under 20 C.F.R. §718.205(c). In support of its contention, employer cites the standard adopted by the United States Court of Appeals for the Sixth Circuit in *Eastover Mining Company v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003), which requires proof that pneumoconiosis hastened death through a specifically defined process that reduces the miner's life by an estimable time. The administrative law judge determined that *Williams* is not controlling, as the present case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. 2007 Decision and Order at 3, 14. Because the miner performed coal mine work in Kentucky, however, the administrative law judge could have applied the Sixth Circuit's holding in *Williams*.[12] *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-201 (1989)(*en banc*); *Borgeson v. Kaiser Steel Corp.*, 8 BLR 1-313, 1-314 (1985), *rev'd on other grounds*, 12 BLR 1-169 (1989)(*en banc*); *Mahon v. National Coal Mining Co.*, 7 BLR 1-749, 1-751 n.4 (1985).

Nevertheless, there is no material conflict between Fourth Circuit and Sixth Circuit case law on this issue. In the preamble to the amended version of 20 C.F.R. §718.205(c), the Department of Labor emphasized that to establish that pneumoconiosis hastened a miner's death, it is the survivor's burden to establish that pneumoconiosis had a "tangible impact" on the miner's death. 65 Fed. Reg. 79,951 (Dec. 20, 2000); *see also NMA*, 292 F.3d at 871, 23 BLR at 2-140. In addition, the Fourth Circuit has held that for

[11] Because the administrative law judge provided a valid alternative rationale, we decline to address employer's argument that the administrative law judge erred in discrediting Dr. Crouch's opinion on the ground that there is no case law specifying the degree of pneumoconiosis that is severe enough to hasten a miner's death. *Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161, 1-164 n.5 (1988); *Kozele v. Rochester & Pittsburg Coal Co.*, 6 BLR 1-378, 1-384 n.4 (1983); Decision and Order on Remand at 6.

[12] The record reflects that the miner performed coal mine employment in Kentucky between 1958 and 1971. Director's Exhibit 3. From 1978, until his retirement in 1993, the miner performed coal mine employment in Virginia. *Id*.

an administrative law judge to credit a physician's opinion, that pneumoconiosis hastened a miner's death, the physician must sufficiently explain the causal connection between the disease and the resulting death and must identify the basis for his or her opinion. *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993). The "hastening death" standard set forth by the Sixth Circuit in *Williams* essentially reflects these principles.

Employer is correct in alleging that, in the present case, the administrative law judge did not assess whether Dr. Perper offered a reasoned and documented opinion establishing that pneumoconiosis had a tangible impact on the miner's death. Rather, the administrative law judge stated, "[i]t is reasonable that the ALS has a respiratory component as described by Dr. Perper. It is also reasonable that the respiratory component played a part in the [m]iner's death." Decision and Order on Remand at 8. We must vacate, therefore, the administrative law judge's crediting of Dr. Perper's opinion under 20 C.F.R. §718.205(c). On remand, the administrative law judge must reconsider whether Dr. Perper's opinion is sufficiently reasoned and documented to establish that pneumoconiosis hastened the miner's death. In so doing, the administrative law judge must render a finding as to whether it is Dr. Perper's opinion that clinical pneumoconiosis, or legal pneumoconiosis, or some combination of the two, hastened the miner's death due to ALS. The administrative law judge must then determine whether Dr. Perper's opinion is adequately documented and reasoned. *See Fields*, 10 BLR at 1-22; *Fuller*, 6 BLR at 1-1293.

We also vacate the administrative law judge's finding that Dr. Fino did not address whether there was a relationship between the miner's ALS and coal dust exposure. Employer is correct in maintaining that Dr. Fino acknowledged that the miner had a respiratory impairment, but opined that the impairment was due to ALS and not to any coal dust-related condition, because there was no evidence in the treatment records that the miner was diagnosed with a coal dust-related impairment during his lifetime. Dr. Robinette also did not attribute the respiratory impairment that he measured, which Dr. Fino relied on, to coal dust exposure. Moreover, as the Board previously held, employer does not have the burden to disprove that the miner's pneumoconiosis aggravated other conditions. *West*, slip op. at 7; Decision on Remand at 7; *see* 20 C.F.R. §718.205(c). The administrative law judge, therefore, impermissibly gave Dr. Fino's opinion less weight for not addressing this issue. Thus, we instruct the administrative law judge on remand to reconsider Dr. Fino's opinion under 20 C.F.R. §718.205(c). *See Compton*, 211 F.3d at 211, 22 BLR at 2-175; *Hicks*, 138 F.3d at 528, 21 BLR at 2-326. The administrative law judge must set forth his findings on remand in detail, including the underlying rationales, in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

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