

BRB No. 04-0905 BLA

EULA MAE SIZEMORE)	
(Widow of MILLARD SIZEMORE))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NATIONAL MINES CORPORATION)	DATE ISSUED: 08/10/2005
)	
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (03-BLA-5541) of Administrative Law Judge Linda S. Chapman denying benefits on a 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). This case involves a survivor's claim filed on March 29, 2001.² After crediting the miner with at least nineteen years of coal mine employment, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Assuming *arguendo* that the evidence was sufficient to establish the existence of pneumoconiosis, the administrative law judge found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant argues that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant also contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.³

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

¹Claimant is the surviving spouse of the deceased miner who died on August 25, 2000. Director's Exhibit 11.

²The miner filed a claim for benefits on March 27, 1985. Director's Exhibit 1. The district director denied benefits on August 20, 1985 and September 6, 1985. *Id.* At the miner's request, the case was forwarded to the Office of Administrative Law Judges for a formal hearing. *Id.* However, claimant and employer subsequently filed an "Agreed Order of Dismissal" *Id.* By Order of Dismissal dated January 4, 1988, Administrative Law Judge Bernard J. Gilday, Jr. ordered that the miner's case be dismissed with prejudice. *Id.* There is no indication that the miner took any further action in regard to his 1985 claim.

³Because no party challenges the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant contends that the administrative law judge erred in finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge credited the opinions of Drs. Burki, Broudy and Fino that the miner did not suffer from pneumoconiosis over the contrary opinions of Drs. Hall and Newton.⁴ Decision and Order at 13.

Claimant contends that the administrative law judge erred in finding Dr. Hall's opinion insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Although the administrative law judge recognized that Dr. Hall treated the miner during his lifetime, the administrative law judge found that Dr. Hall's diagnosis of coal workers' pneumoconiosis was not sufficiently reasoned. Decision and Order at 13. Whether a medical report is sufficiently reasoned is for the administrative law judge as the fact-finder to decide. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Dr. Hall explained that her diagnosis of coal workers' pneumoconiosis was based upon interpretations of the miner's June 26, 1990 and June 11, 1996 x-rays. *See* Claimant's Exhibits 1, 2. The administrative law judge properly questioned Dr. Hall's reliance upon these x-ray interpretations to support her diagnosis of pneumoconiosis.⁵ Decision and

⁴In a letter dated December 4, 2001, Dr. Newton opined that the miner suffered from "long-standing coal workers' pneumoconiosis." Director's Exhibit 14. The administrative law judge discredited Dr. Newton's opinion because she found that it was poorly reasoned and because it was based solely upon the miner's history of coal mine employment. Decision and Order at 13. Because no party challenges the administrative law judge's basis for discrediting Dr. Newton's opinion, this finding is affirmed. *Skrack, supra*.

⁵Dr. Hall relied upon Dr. Cordero's interpretation of the miner's June 26, 1990 x-ray. The administrative law judge noted that while Dr. Cordero interpreted this film as showing "signs" of pneumoconiosis, *see* Claimant's Exhibit 2, he did not otherwise classify his findings. Decision and Order at 7. Dr. Hall also relied upon Dr. Bofill's interpretation of the miner's June 11, 1996 x-ray. Dr. Bofill interpreted this film as revealing "changes of [chronic obstructive pulmonary disease]." Claimant's Exhibit 2. The administrative law judge accurately noted that this interpretation does not contain any finding of pneumoconiosis. *See* Decision and Order at 7.

During a May 1, 2003 deposition, Dr. Hall noted the presence of a "reticulate nodular pattern" on the miner's August 1, 2001 x-ray. Employer's Exhibit 2 at 12. Dr. Vuskovich, a B reader, interpreted the miner's August 1, 2000 x-ray as positive for pneumoconiosis. Claimant's Exhibit 3. However, Dr. Poulos, a B reader and Board-certified radiologist, interpreted this film as negative for pneumoconiosis. Employer's Exhibit 1. The administrative law judge acted within her discretion in crediting Dr.

Order at 13. Because Dr. Hall's only other basis for diagnosing the existence of pneumoconiosis was the miner's coal mine employment history, *see* Claimant's Exhibits 1, 2, her opinion does not constitute a reasoned medical opinion within the meaning of 20 C.F.R. §718.202(a)(4). *Cornett v. Benham Coal Co.*, 277 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). We, therefore, affirm the administrative law judge's finding that Dr. Hall's opinion is not sufficiently reasoned. *See Clark, supra; Lucostic, supra.*

Claimant also contends that Dr. Hall's diagnosis of chronic obstructive pulmonary disease is sufficient to support a finding of "legal" pneumoconiosis.⁶ We disagree. Dr. Hall did not address whether the miner's chronic obstructive pulmonary disease was attributable, in whole or in part, to his coal dust exposure.⁷ Consequently, Dr. Hall's opinion is insufficient to support a finding of "legal" pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2).

We also reject claimant's contention that the administrative law judge failed to give proper weight to Dr. Hall's opinion based upon her status as the miner's treating physician. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that there is no rule requiring deference to the opinion of a treating physician in black lung claims.⁸ *Eastover Mining Co. v. Williams*,

Poulos's negative interpretation of the miner's August 1, 2000 x-ray over Dr. Vuskovich's positive interpretation of this film based upon Dr. Poulos's superior qualifications. *See Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 7.

⁶"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).

⁷During a May 1, 2003 deposition, Dr. Hall stated that chronic obstructive pulmonary disease *can* be caused by the inhalation of coal dust. Employer's Exhibit 2 at 13-14. However, Dr. Hall also acknowledged that cigarette smoking is one of the causes of chronic obstructive pulmonary disease. *Id.* at 5, 14. Because Dr. Hall did not address whether *the miner's* chronic obstructive pulmonary disease was attributable to his coal dust exposure, her diagnosis does not support a finding of "legal" pneumoconiosis.

⁸Revised Section 718.104(d) provides that an adjudicator must give consideration to the relationship between the miner and any treating physician whose report is admitted into the record. 20 C.F.R. §718.104(d). The Sixth Circuit has recognized this provision codifies judicial precedent and does not work a substantive change in the law. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002).

338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003). The Sixth Circuit has held that the opinions of treating physicians should get the deference they deserve based upon their power to persuade. *Id.* The Sixth Circuit explained that the case law and applicable regulatory scheme clearly provide that administrative law judges must evaluate opinions of treating physicians just as they consider opinions of other experts. *Id.* As discussed, *supra*, the administrative law judge properly accorded less weight to Dr. Hall's opinion that the miner suffered from pneumoconiosis because she found that her opinion was not sufficiently reasoned. *Clark, supra; Lucostic, supra*; Decision and Order at 13.

The administrative law judge also permissibly accorded greater weight to the opinions of Drs. Burki, Broudy and Fino, finding that these opinions were well reasoned and supported by the objective evidence.⁹ *See Clark, supra; Voytovich v. Consolidation Coal Co.*, 5 BLR 1-141 (1982); Decision and Order at 13. Because it is supported by the record, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis. *See* 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, we affirm the administrative law judge's denial of benefits in this survivor's claim under 20 C.F.R. Part 718. *Trumbo, supra*. Consequently, we need not address claimant's contentions of error regarding the administrative law judge's finding at 20 C.F.R. §718.205(c). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

⁹During a deposition taken on June 11, 2003, Dr. Burki opined that the miner did not suffer from coal workers' pneumoconiosis or any occupational disease. Employer's Exhibit 3 at 4.

In a report dated August 1, 2003, Dr. Broudy opined that the miner did not suffer from coal workers' pneumoconiosis, silicosis or any chronic lung disease caused by the inhalation of coal mine dust. Employer's Exhibit 4. Dr. Broudy reiterated his opinion during a September 2, 2003 deposition. Employer's Exhibit 6 at 7-8.

In a report dated August 15, 2003, Dr. Fino opined that there was insufficient objective evidence to justify a diagnosis of coal workers' pneumoconiosis. Employer's Exhibit 5. During a September 16, 2003 deposition, Dr. Fino reiterated that the miner did not suffer from coal workers' pneumoconiosis. Employer's Exhibit 7 at 10. Dr. Fino also opined that there was no evidence of an occupational disease. *Id.* at 10-11.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge