

BRB No. 06-0155 BLA

LINDA CAROL SLONE)
(Widow of ROBERT LEE SLONE))
)
 Claimant-Petitioner)
)
 v.)
)
 GAMBLE COAL COMPANY,) DATE ISSUED: 08/29/2006
 INCORPORATED)
)
 and)
)
 EMPLOYER'S INSURANCE OF WAUSAU)
)
 Employer/Carrier-)
 Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Linda Carol Slone, Elkhorn City, Kentucky, *pro se*.

J. Logan Griffith (Porter, Schmitt, Banks & Baldwin), Paintsville, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order Denying Benefits (03-BLA-6017) of Administrative Law Judge Pamela Lakes Wood 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). The instant survivor's claim was filed by claimant on June 21, 2001.² The administrative law judge accepted the parties' stipulation that the miner had worked sixteen years in coal mine employment, and that he suffered from coal workers' pneumoconiosis at the time of his death on February 27, 1995. However, after weighing the medical evidence, the administrative law judge found that claimant failed 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.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We 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).

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 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); *see Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

¹ Susie Davis, the President of Kentucky Black Lung Coalminers and Widows Association of Pikeville, Kentucky, requested on behalf of claimant that the Board review the administrative law judge's decision. Ms. Davis is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

² Claimant is the widow of Robert Lee Slone, the miner, who died on February 27, 1995.

After consideration of the administrative law judge's Decision and Order, the briefs of the parties, and the issues presented on appeal, we are compelled to vacate the denial of benefits and remand this case for further consideration based on the administrative law judge's failure to properly explain the weight accorded the evidence. In her Decision and Order, the administrative law judge first addressed the issue of whether claimant established that the miner's death was due to pneumoconiosis by virtue of the Section 718.304 presumption. 30 U.S.C. §921(c)(3). Section 718.304 provides that there is an irrebuttable presumption that a miner's death was due to pneumoconiosis if (A) an x-ray of the miner's lungs shows an opacity greater than one centimeter; (B) a biopsy or autopsy shows massive lesions in the lung; or (C) when diagnosed by other means the condition could reasonably be expected to reveal a result equivalent to (A) or (B). *See* 20 C.F.R. §718.304. The Board has held that autopsy findings can support a finding of complicated pneumoconiosis only where a physician diagnoses "massive lesions" or where an evidentiary basis exists for the administrative law judge to make an equivalency finding between autopsy findings and x-ray findings. *See* 20 C.F.R. §718.304; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Lohr v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-1264 (1984). Reviewing the autopsy evidence in the instant case, the administrative law judge properly found that while the autopsy prosector opined that the miner had complicated pneumoconiosis and massive fibrosis, there was no basis for an equivalency determination. Because the administrative law judge's finding that the miner did not have complicated pneumoconiosis is consistent with applicable law, we affirm her determination that claimant failed to establish death due to pneumoconiosis by benefit of the presumption at Section 718.304.

We next turn to the administrative law judge's analysis of whether simple pneumoconiosis hastened the miner's death.³ As noted by the administrative law judge, according to the death certificate signed by the miner's treating physician, Dr. Malempati, the miner's death was due to carcinoma of the pancreas. Director's Exhibit 13; Decision and Order at 11. The miner's medical records do not reflect any treatment for pulmonary disease until February 1997 when he was admitted to the hospital for shortness of breath and chest x-rays revealed bilateral pulmonary infiltrates, possibly secondary to metastatic disease. Director's Exhibit 14; Decision and Order at 11. According to the Death Summary prepared by Dr. Malempati, the miner remained in the

³ The administrative law judge found that pneumoconiosis was not the direct cause of the miner's death, noting that while the autopsy provides some weak support for the theory of direct causation, the "thrust" of the autopsy prosector's opinion was that pneumoconiosis hastened the miner's death. Decision and Order at 12. We affirm the administrative law judge's finding that the weight of the probative evidence established that pneumoconiosis was not the direct cause of the miner's death. Decision and Order at 12.

hospital for treatment of pneumonia, malnutrition, and dehydration and “went down hill slowly” until his death on February 27, 1995. Director’s Exhibit 14.

An autopsy was performed by Dr. Dennis, who reported that the miner died as a result of his pancreatic cancer, but also identified the “acute cause of death” as pulmonary congestion and edema. Dr. Dennis further diagnosed that the miner had extensive coal workers’ pneumoconiosis, extensive fibrosis and cor pulmonale. Director’s Exhibit 14. In a supplemental questionnaire, Dr. Dennis clarified his prior statement, opining that the miner’s pulmonary congestion and edema, along with cor pulmonale, were caused by severe anthracosilicosis “completely related” to coal dust exposure. Dr. Dennis indicated the miner’s death was hastened by pneumoconiosis, although his rationale was somewhat garbled: “stress of death causing malignancy hastened by anthracosilicosis – pul. congestion & edema caused by anthracosilicosis and cor pulmonle.” Claimant’s Exhibit 1; Decision and Order at 13.

After reviewing the autopsy report, Dr. Malempati prepared a letter, stating that pneumoconiosis contributed to the miner’s death. The administrative law judge found that the letter was brief, conclusory and not particularly well-reasoned. Decision and Order at 15. Dr. Fannin, who treated the miner on July 19, 1994 for complications of his pancreatic cancer, likewise reviewed the miner’s medical record, including the autopsy report. The administrative law judge noted that “[b]ased upon various factors (including the extensive anthrasilicosis found by Dr. Dennis on autopsy, the implication of significant parenchymal involvement and damage due to exposure to coal dust, the significant fibrous connective tissue deposition in the lung associated with anthrasilicosis, and the finding of cor pulmonale ‘which is typically a right sided heart failure that is a complication of extensive lung disease’),” Dr. Fannin opined that the miner’s death was hastened by pneumoconiosis because his extensive lung damage would have left him at high risk for the development of pneumonia, and would have decreased his ability to recover from pneumonia or other pulmonary complications, as evidenced by the miner’s final hospitalization records.⁴ Director’s Exhibit 15; Decision and Order at 13.

⁴ After specifically identifying the basis for Dr. Fannin’s opinion, the administrative law judge inexplicably states that “Dr. Fannin’s conclusions are based on the autopsy report, but it is unclear exactly how he has reached his conclusions.” Decision and Order at 15. To the extent that the administrative law judge considered Dr. Fannin’s opinion to be insufficiently documented or reasoned, the administrative law judge must reconsider Dr. Fannin’s opinion in light of her own identification of how the doctor reached his conclusions based on the autopsy findings. Furthermore, although the administrative law judge notes that Dr. Renn “has disputed [Dr. Fannin’s] suggestion that pneumoconiosis placed the [m]iner at an increased risk for developing pneumonia,” the administrative law judge never explains why she chose to credit Dr. Renn’s opinion over Dr. Fannin’s opinion on this issue. The mere fact that Dr. Renn disputed Dr. Fannin’s

In contrast to claimant's evidence, employer submitted the medical opinions of Drs. Renn and Castle. Dr. Renn opined that the miner died as the result of inoperable pancreatic cancer complicated by obstructive jaundice, terminal bilateral pneumonia and terminal pulmonary edema. Employer's Exhibit 2; Decision and Order at 15. Dr. Renn diagnosed simple coal workers' pneumoconiosis but opined that the miner was not totally disabled by the condition, and further opined that the miner's death was not hastened by pneumoconiosis. Dr. Castle similarly agreed that the miner died solely as the result of his carcinoma of the pancreas, unrelated to coal dust exposure. Dr. Castle felt that the autopsy revealed at best "probable" pneumoconiosis, and opined that that the miner's pneumoconiosis neither contributed to nor hastened his death. Director's Exhibit 17; Decision and Order at 14.

In weighing the conflicting medical opinion evidence, the administrative law judge rejected the opinions of Drs. Dennis, Fannin and Malempati as being insufficiently reasoned to support a finding that the miner's death was hastened by pneumoconiosis. The administrative law judge rejected claimant's medical experts, citing to specific instances where their opinions were contradicted by employer's experts. The administrative law judge specifically noted that "only the opinions of Drs. Castle and Renn make sense when taken in the context of all of the medical evidence." Decision and Order at 16. We disagree.

In this case, the administrative law judge has failed to reconcile the conflicts in the medical evidence between the autopsy findings recorded by Dr. Dennis and the opinions of employer's medical experts. Although Drs. Renn and Castle opined that pneumoconiosis did not hasten the miner's death, their opinions were based in part on their belief that the miner had no respiratory impairment during his lifetime. Because the regulations provide that total respiratory disability may be established based on a diagnosis of cor pulmonale with right sided congestive heart failure, 20 C.F.R. §718.204(b)(2)(iii), the administrative law judge must specifically address whether the opinions of Drs. Renn and Castle are reasoned given the unrefuted autopsy finding that the miner suffered from cor pulmonale, which Dr. Fannin described as typically a right-sided heart failure, at the time of his death.⁵ See *Director, OWCP v. Rowe*, 710 F.2d 251,

opinion does not render Dr. Fannin's opinion less reasoned or entitled to less weight. It is the administrative law judge's duty to resolve the conflicts in the medical evidence and explain the weight accorded the evidence. See *Hall v. Director, OWCP*, 12 BLR 1-80 (1988).

⁵ This issue is particularly relevant in view of the contrary opinions of Drs. Dennis and Fannin that the miner's respiratory condition evidenced by the autopsy finding of cor

5 BLR 2-99 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). In short, the administrative law judge must further explain the basis for finding that the opinion of Dr. Renn and Dr. Castle “makes sense when taken in the context of all the medical evidence” when neither physician has accounted for the presence of cor pulmonale. *See* Decision and Order at 16.

Additionally, the administrative law judge has not properly explained why she chose to assign particular weight to Dr. Castle’s opinion that pneumoconiosis did not hasten the miner’s death. The administrative law judge found: “In particular, Dr. Castle, has given a thoughtful, reasoned explanation for why the [m]iner suddenly developed lung problems at the time of his terminal hospitalization, and that analysis is persuasive in discounting coal workers’ pneumoconiosis in playing any part in hastening or otherwise contributing to the [m]iner’s early death.”⁶ Decision and Order at 16. Contrary to the administrative law judge’s finding, Dr. Castle is hesitant in his reports even to concede that the miner suffered from pneumoconiosis, noting only that it is “possible” that the miner had pathological evidence of pneumoconiosis or that the miner had “probable” pneumoconiosis. Director’s Exhibits 17, 18. The administrative law judge’s decision does not reflect her consideration of whether Dr. Castle’s opinion is reasoned with regard to the cause of the miner’s death, given his disagreement with the administrative law judge’s finding, consistent with the autopsy evidence, that the miner suffered from simple coal worker’s pneumoconiosis.⁷ On remand, the administrative law

pulmonale would have hastened the miner’s death due to pulmonary congestion and edema.

⁶ We note that the administrative law judge credited Drs. Renn and Castle based on their qualifications as Board-certified pulmonologists. Decision and Order at 16. The qualifications of the physicians, however, are of no probative value if the opinions themselves are not reasoned. *See generally Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983).

⁷ Although Dr. Castle referenced the miner’s normal chest x-rays during his lifetime hospitalizations, we note that none of the miner’s chest x-rays were interpreted for the presence or absence of pneumoconiosis based on ILO classifications standards. Furthermore, Dr. Castle is the only physician of record to opine that the miner did not have simple pneumoconiosis. While Dr. Castle took issue with the autopsy diagnosis of pneumoconiosis because Dr. Dennis referenced “pleural plaques,” Dr. Castle does not address the autopsy finding that the miner had extensive fibrosis extending “from plaques on the pleural surface *down into the parenchyma of the lung* (emphasis added),” Director’s Exhibit 14, nor does he address the autopsy finding of anthracosilicosis, which

judge should consider to what extent Dr. Castle's opinion on the existence of pneumoconiosis influenced his opinion as to whether pneumoconiosis hastened the miners' death. *See Skukan v. Consolidation Coal Co.*, 99 F.2d 1228, 1233, 17 BLR 2-97, 2-104 (6th Cir. 1993), *vacated on other grounds*, 512 U.S. 1231 (1994); *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1042, 17 BLR 2-16, 2-24 (6th Cir. 1993); *Adams v. Director, OWCP*, 886 F.2d 818, 820, 13 BLR 2-52, 2-63 (6th Cir. 1989).

For these reasons, we vacate the administrative law judge's finding, pursuant to 20 C.F.R. §718.205(c), that claimant failed to establish that miner's death was hastened by pneumoconiosis. The administrative law judge is instructed on remand to resolve the conflicts in the medical opinion evidence based upon her proper consideration of the autopsy findings in this case.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

the administrative law judge recognized as pneumoconiosis pursuant to 20 C.F.R. §718.201. On remand, the administrative law judge should consider factors that tend to undermine the reliability of a doctor's opinion. *See Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985).