

BRB No. 06-0506 BLA

SWANNIE L. LINVILLE	)	
(Widow of RALPH E. LINVILLE)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
U.S. STEEL MINING COMPANY	)	DATE ISSUED: 01/31/2007
	)	
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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Roger D. Forman (Forman & Huber, L.C.), Charleston, West Virginia, for claimant.

Howard G. Salisbury, Jr. (Kay Casto & Chaney PLLC), Charleston, West Virginia, for employer.

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

DOLDER, Chief Administrative Appeals Judge:

Employer appeals the Decision and Order (04-BLA-6101) of Administrative Law Judge Michael P. Lesniak 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). The administrative law judge credited the miner with at least thirteen years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). The

administrative law judge also found the evidence sufficient 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 awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Claimant<sup>1</sup> responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.<sup>2</sup>

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Because the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).<sup>3</sup> See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director*,

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<sup>1</sup>Claimant is the widow of the miner. Director's Exhibits 4, 11. The miner filed a claim on August 26, 1991. Director's Exhibit 1. On July 27, 1993, Administrative Law Judge Robert G. Mahony issued a Decision and Order awarding benefits. *Id.* The miner died on August 16, 2002. Director's Exhibit 11. Claimant filed a survivor's claim on September 16, 2002. Director's Exhibit 3.

<sup>2</sup>Since the administrative law judge's length of coal mine employment finding and his findings that the evidence is sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>3</sup>Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.

....

*OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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 Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

Employer contends that the administrative law judge erred in finding the evidence sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Dr. Suvannoparat completed the miner's death certificate. Dr. Suvannoparat listed myocardial infarction as the immediate cause of the miner's death. Director's Exhibit 11. Dr. Suvannoparat also listed coronary artery disease and diabetes mellitus as underlying conditions leading to the immediate cause of the miner's death. *Id.*

Drs. Cohen and Castle reviewed the medical evidence. In a July 12, 2005 report, Dr. Cohen opined that the miner's death was hastened by a restrictive impairment caused by coal dust exposure. Claimant's Exhibit 1. In contrast, in a December 15, 2004 report, Dr. Castle opined that the miner's death was not caused by pneumoconiosis. Employer's Exhibit 1.

The administrative law judge found that Dr. Cohen's opinion outweighed Dr. Castle's contrary opinion, on the ground that Dr. Cohen's opinion is better reasoned. Decision and Order at 6-7. The administrative law judge also discounted Dr. Castle's opinion regarding the cause of the miner's death because Dr. Castle relied upon an incorrect underlying premise, namely, that the miner did not have pneumoconiosis. *Id.* at 7. Further, the administrative law judge discounted the miner's death certificate, because Dr. Suvannoparat did not directly address whether the miner's pulmonary impairment could have been a contributing or hastening cause of his death. *Id.*

Employer contends that the administrative law judge erred in finding that Dr. Cohen's opinion was sufficient to establish that the miner's death was due to pneumoconiosis. Employer specifically argues that Dr. Cohen's opinion is too equivocal to support such a finding. Dr. Cohen addressed whether the miner's pneumoconiosis hastened his death from a myocardial infarction by stating:

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(5) 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).

[The miner's] last few years of life were characterized by multiple hospitalizations for his advanced chronic obstructive pulmonary disease and sleep apnea. He had significant gas exchange abnormalities from his pulmonary impairment. He was noted by his treating physicians to have cor-pulmonale and had been on home oxygen therapy. These impairments put considerable strain on the myocardium and *more likely than not* would hasten his death from coronary artery disease.

Claimant's Exhibit 1 (emphasis added). Dr. Cohen further opined that "[t]his degree of impairment was clearly disabling for the duties of his last coal mining job as a general laborer and hastened his death." *Id.*

The administrative law judge found that Dr. Cohen's use of the term "more likely than not" did not render his opinion, regarding the contribution of the miner's pneumoconiosis to his death, equivocal. Decision and Order at 6. The administrative law judge noted that Dr. Cohen ultimately concluded "in unequivocal terms that [the miner's] respiratory or pulmonary impairment hastened [his] death." *Id.* at 6-7. The administrative law judge, therefore, found that Dr. Cohen's opinion was sufficient to establish that the miner's death was due to his pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

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) and 30 U.S.C. §932(a), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). In this case, the administrative law judge did not explicitly address why Dr. Cohen used the term "more likely than not." Specifically, the administrative law judge did not consider whether Dr. Cohen used this term to indicate that he was uncertain as to the effect of the miner's pneumoconiosis on his death from a coronary artery disease, or whether it was used to couch his opinion in cautious, but affirmative, terms. Rather, the administrative law judge merely stated that Dr. Cohen ultimately concluded in unequivocal terms that the miner's respiratory or pulmonary impairment hastened his death.<sup>4</sup> Decision and Order at 6-7. Thus, we hold that the administrative law judge failed to provide a sufficiently detailed explanation as to why he found, based on the specifics of Dr. Cohen's report, that Dr. Cohen unequivocally opined

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<sup>4</sup>In the conclusion section of his report, Dr. Cohen stated that "[the miner's] 13 years of coal mine dust exposure and possibly his obesity contributed to his restrictive impairment." Claimant's Exhibit 1. Dr. Cohen also stated that "[t]hese combined impairments resulted in the need for home oxygen therapy." *Id.* Lastly, Dr. Cohen stated that "[t]his degree of impairment was clearly disabling for the duties of his last coal mining job as a general laborer and hastened his death." *Id.*

that the miner's respiratory or pulmonary impairment hastened his death. *Wojtowicz*, 12 BLR at 1-165; *see also Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987).

Based on the foregoing, we vacate the administrative law judge's finding that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c), and remand the case for further consideration of the evidence in accordance with the APA.

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

I concur.

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ROY P. SMITH  
Administrative Appeals Judge

HALL, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision to vacate the administrative law judge's award of benefits, and remand the case for further consideration of the evidence. I would affirm the administrative law judge's finding that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The administrative law judge considered the reports of Drs. Cohen and Castle, and a death certificate signed by Dr. Suvannoparat. Dr. Cohen opined that the miner's death was hastened by a restrictive impairment caused by coal dust exposure,

Claimant's Exhibit 1, while Dr. Castle opined that the miner's death was not caused by pneumoconiosis, Employer's Exhibit 1. The death certificate listed myocardial infarction, coronary artery disease, and diabetes mellitus as causes of the miner's death. Director's Exhibit 11. Based on his weighing of the conflicting medical evidence, the administrative law judge accorded dispositive weight to Dr. Cohen's opinion. Decision and Order at 7.

Contrary to the majority's determination, I would hold that the administrative law judge adequately explained why he found that Dr. Cohen's opinion is unequivocal. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Although an administrative law judge may not rely on a medical opinion that is purely speculative, *United States Steel Mining Co. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999), it is the administrative law judge's role to evaluate the weight and credibility of a medical opinion, *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764, 21 BLR 2-587, 2-606 (4th Cir. 1999); *Underwood v Elkay Mining Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-2-28 (4th Cir. 1997). In this case, the administrative law judge considered Dr. Cohen's opinion as a whole and addressed the only aspect of that opinion that could be interpreted as equivocal. The administrative law judge specifically stated:

Although there are no medical records addressing the years immediately prior to [the miner's] death, I find that Dr. Cohen's conclusions sufficiently address how [the miner's] impairments contributed to and/or hastened his death. Dr. Cohen identified that "[the miner's] impairments put considerable strain on the myocardium and more likely than not would hasten his death from coronary artery disease." I find that Dr. Cohen's use of "more likely than not" is not an equivocal opinion on whether [the miner's] pneumoconiosis contributed to his death. Ultimately, Dr. Cohen concluded in unequivocal terms that [the miner's] respiratory or pulmonary impairment hastened [the miner's] death.

Decision and Order at 6-7.

In the conclusion section of his report, Dr. Cohen stated that "[the miner's] 13 years of coal mine dust exposure and possibly his obesity contributed to his restrictive impairment." Claimant's Exhibit 1. Dr. Cohen further stated that "[t]hese combined impairments resulted in the need for home oxygen therapy." *Id.* Finally, Dr. Cohen stated that "[t]his degree of impairment was clearly disabling for the duties of his last coal mining job as a general laborer and hastened his death." *Id.* Thus, since he explained why he found that the terms used by Dr. Cohen did not indicate that the doctor was uncertain as to the effects of pneumoconiosis in hastening the miner's death, I would hold that the administrative law judge reasonably found that Dr. Cohen's opinion regarding the cause of the miner's death is unequivocal. *Wojtowicz*, 12 BLR at 1-165.

I would also hold that the administrative law judge acted within his discretion in according dispositive weight to Dr. Cohen's opinion. *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). The administrative law judge properly accorded greater weight to Dr. Cohen's opinion than to Dr. Castle's contrary opinion, because he found that it was better reasoned. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). In addition, the administrative law judge properly discounted Dr. Castle's opinion regarding the cause of the miner's death, because Dr. Castle opined that the miner did not have pneumoconiosis, a finding contrary to the administrative law judge's determination. *Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002); *Toler v. Eastern Assoc. Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995). Further, the administrative law judge reasonably found the death certificate was entitled to little weight on the issue of death due to pneumoconiosis, because Dr. Suvannoparat did not directly address whether the miner's pulmonary impairment could have been a contributing or hastening cause of his death. Decision and Order at 7.

Therefore, I would affirm the administrative law judge's finding that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c), as supported by substantial evidence. Consequently, I would affirm the administrative law judge's award of benefits.

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BETTY JEAN HALL  
Administrative Appeals Judge