

BRB No. 04-0919 BLA

DARLENE A. COUTTS )  
(Widow of WARD J. COUTTS, JR.) )

Claimant-Respondent )

v. )

LION MINING COMPANY )

and )

THE FIRE & CASUALTY COMPANY )  
OF CONNECTICUT )

Employer/Carrier-Respondents )

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )

Party-in-Interest )

DATE ISSUED: 07/28/2005

DECISION and ORDER

Appeal of the Decision and Order on Remand - Awarding Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

James M. Poerio (Tucker Arensberg, P.C.), Pittsburgh, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand - Awarding Benefits (02-BLA-

0121) of Administrative Law Judge Richard A. Morgan on a survivor's claim<sup>1</sup> 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 is on appeal to the Board for the second time. In the initial Decision and Order, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718 and, after crediting the miner with twenty-one years of qualifying coal mine employment, found that claimant established that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's pneumoconiosis substantially contributed to his death. 20 C.F.R. §§718.202(a), 718.203(b), 718.205(c). Accordingly, the administrative law judge awarded benefits to commence as of March 1, 2000, the first day of the month in which the miner died.

Upon review of employer's appeal, the Board affirmed in part, and vacated in part the administrative law judge's decision awarding benefits and remanded the case for the administrative law judge to rule on the admissibility of Dr. Oesterling's post-hearing June 27, 2002 supplemental report and accompanying attachments. The Board further instructed that if, on remand, the administrative law judge found Dr. Oesterling's supplemental report and attachments to be admissible, he must then evaluate and weigh that evidence with the other relevant evidence to determine if the miner's death was hastened by pneumoconiosis pursuant to Section 718.205(c).<sup>2</sup> *Coutts v. Lion Mining Co.*, BRB No. 02-0884 BLA (Sep. 26, 2003) (unpub.).

Pursuant to the Board's remand instructions, the administrative law judge found that Dr. Oesterling's June 27, 2002 supplemental report and accompanying photographs were admissible. Consequently, the administrative law judge reevaluated Dr. Oesterling's supplemental report with attachments in conjunction with the other relevant evidence. According greater weight to the opinion of Dr. Perper, as buttressed by those of Drs. Goldblatt and Rizkalla, over the contrary opinions of Drs. Crouch, Fino, and Oesterling, the administrative law judge concluded that coal workers' pneumoconiosis was a substantially contributing factor which caused and hastened the miner's cardiac-related death pursuant to Section 718.205(c)(2), (4), and (5). Accordingly, benefits were awarded, commencing as of March 1, 2000, the first day of the month in which the miner died.

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<sup>1</sup> Claimant, Darlene A. Coutts, is the widow of Ward J. Coutts, Jr., the miner who died on March 17, 2000. Director's Exhibit 8. Claimant filed her application for benefits on May 31, 2000. Director's Exhibit 1.

<sup>2</sup> The Board affirmed the administrative law judge's determinations with respect to length of coal mine employment, designation of responsible operator, and pursuant to 20 C.F.R. §§718.202(a), 718.203(b) as these determinations were unchallenged on appeal. *Coutts v. Lion Mining Co.*, BRB No. 02-0884 BLA, *slip op.* at 2 n.3 (Sep. 26, 2003) (unpub.).

On appeal, employer argues that the administrative law judge erred in finding that claimant established that the miner's death was due to pneumoconiosis. Specifically, employer contends that the administrative law judge erred in failing to properly weigh the medical opinions of Drs. Fino and Oesterling, to resolve the conflict in the opinions between the expert pathologists, Drs. Goldblatt and Oesterling, and in finding the opinion of Dr. Perper to be the most credible. Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating his intention not to participate in this appeal.

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 the 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer first contends that, because claimant does not argue that the immediate cause of the miner's death was pneumoconiosis, but rather, that the miner's death was "hastened" by pneumoconiosis, it was fundamental for the administrative law judge to consider the miner's lifetime health problems and conditions in determining whether pneumoconiosis "hastened" the miner's death. Specifically, employer contends that the administrative law judge erred in according little weight to the opinion of Dr. Fino as unreasoned inasmuch as the administrative law judge admitted that Dr. Fino had "provided a lengthy and detailed report summarizing the evidence." Decision and Order on Remand at 12. Further, employer avers that the administrative law judge erred in assigning less weight to the opinion of Dr. Fino that, even though the miner had coal workers' pneumoconiosis, his mild to moderate reversible obstructive lung disease secondary to smoking was not disabling and his death was "due to a hemorrhage," a fact undisputed by the other physicians, because this opinion was consistent with the miner's lifetime evidence.

Contrary to employer's argument, however, the administrative law judge permissibly found Dr. Fino's opinion that coal workers' pneumoconiosis did not hasten or play any role in the miner's demise to be problematic. While acknowledging that Dr. Fino, a Board-certified internist and pulmonologist, "provided a lengthy and detailed report summarizing the evidence," the administrative law judge, nevertheless, found that Dr. Fino's opinion was entitled to little weight because Dr. Fino failed to analyze the medical evidence relative to his conclusion, as opposed to Dr. Perper, who provided not only a "detailed analysis of the evidence," but also an "underlying rationale for his conclusions, together with supporting medical literature." Decision and Order on Remand at 12-13; Director's Exhibit 24; Employer's Exhibit 2. It is well established that an administrative law judge "may disregard a medical opinion that does not adequately explain the basis for its conclusion" and "should

reject as insufficiently reasoned any medical opinion that reaches a conclusion contrary to objective clinical evidence without explanation.” *Balsavage v. Director, OWCP*, 295 F.3d 390, 397, 22 BLR 2-386, 2-396 (3d Cir. 2002); *Lango v. Director, OWCP*, 104 F.3d 573, 577, 21 BLR 2-12, 2-20 (3d Cir. 1997), citing *Freeman United Coal Co. v. Cooper*, 965 F.2d 443, 16 BLR 2-74 (7th Cir. 1992) (“An assertion which does not explain how the physician reached the expressed opinion or contain his reasoning does not qualify as a reasoned medical opinion.”). Because the administrative law judge reasonably found that Dr. Fino failed to provide sufficient discussion for his conclusions, a factor which detracts from the probative weight of this opinion, we affirm the administrative law judge’s determination that Dr. Fino’s opinion was inadequately explained, and thus, insufficiently reasoned.

Employer next contends that the administrative law judge erred in discrediting the opinion of Dr. Oesterling, because it was based on the miner’s earlier non-qualifying blood gas studies and negative x-rays. Employer contends that the administrative law judge erred because Dr. Oesterling acknowledged the presence of coal workers’ pneumoconiosis after his subsequent review of the autopsy evidence but nonetheless, found that the miner’s major disease process was due to cigarette smoking, not coal mine dust inhalation, and that the miner’s pneumoconiosis did not contribute to his demise. Employer contends that Dr. Oesterling was not relying on the negative x-ray readings and non-qualifying blood gas studies to opine that pneumoconiosis was not the cause of the miner’s death, but instead was merely setting forth a correct history of the earlier, objective evidence that was filed in the miner’s lifetime claims.

In according less weight to Dr. Oesterling’s opinion regarding the cause of death, the administrative law judge permissibly found that Dr. Oesterling’s consideration of the earlier non-qualifying blood gas studies and negative chest x-rays was problematic because it demonstrated that Dr. Oesterling disregarded the progressive and latent nature of pneumoconiosis.<sup>3</sup> Further, the administrative law judge noted that Dr. Oesterling failed to mention earlier contrary data from the miner’s lifetime claims, *i.e.*, positive x-ray interpretations, medical reports diagnosing the existence of pneumoconiosis, and physicians’ opinions finding some level of pulmonary impairment in the miner. The administrative law judge additionally found Dr. Oesterling’s opinion concerning the cause of death to be less probative because Dr. Oesterling’s pathology findings were inconsistent with the findings of other pathologists. This was rational. *See Mullins Coal Co. of Va. v. Director, OWCP*, 484

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<sup>3</sup> After analyzing x-ray interpretations and arterial blood gas studies conducted in 1991 and 1993, Dr. Oesterling opined, “...this indicates normal oxygenation of the blood stream at and after this gentleman left the mining industry, obviously this would not be the case if there were significant interstitial changes due to coalworkers’ [sic] pneumoconiosis. Also the x-rays reported at that time indicated no evidence of coalworkers’ [sic] pneumoconiosis.” Director’s Exhibit 32; Employer’s Exhibit 1.

U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 209, 22 BLR 2-467, 2-477-478 (3d Cir. 2002) (court rejected physicians' opinions that pneumoconiosis could not have contributed to miner's death which were premised on fact that miner had completed pulmonary function and blood gas studies within normal limits because these opinions were predicated on faulty tenet that miner's pneumoconiosis could not have progressed); *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 314-315, 20 BLR 2-76, 2-88-89 (3d Cir. 1995); *Penn Allegheny Coal Co. v. Mercatell*, 878 F.2d 106, 108, 12 BLR 2-305, 2-308-309 (3d Cir. 1989); Decision and Order on Remand at 13. Accordingly, we reject employer's arguments.

Employer also asserts that the administrative law judge erred by failing to resolve the conflicts in the pathology reports of Drs. Goldblatt and Oesterling regarding: the nature of the nodules demonstrated on autopsy slides; the presence of micronodules versus macronodules; the definition of a macronodule; the size of the nodules present; and the significance of multiple micronodules in close proximity versus the coalescence of macronodules. Specifically, employer avers that the administrative law judge totally disregarded the fact that Dr. Oesterling was able to distinguish between two micronodules in close proximity as opposed to one macronodule, as found by Drs. Perper and Goldblatt, because of his utilization of photomicrographs magnifying the autopsy slides 300 times which clearly illustrated the appearance of two micronodules in close proximity. Additionally, employer avers that the administrative law judge erred in failing to resolve the conflict between the opinions of Drs. Oesterling and Perper regarding the size of the nodules seen on autopsy.

In considering the pathological evidence, the administrative law judge discounted Dr. Oesterling's pathology findings because he found Dr. Oesterling's conclusions to be inconsistent with the findings of the other pathologists. Decision and Order on Remand at 13; Employer's Exhibit 3 at 36-41. Within a permissible exercise of his discretion, the administrative law judge found that Dr. Perper's autopsy review, as corroborated by the opinions of Drs. Goldblatt and Rizkalla, was more persuasive on the disputed pathological issues. *See Kramer*, 305 F.3d at 211, 22 BLR at 2-481 (it is not function of court to weigh conflicting evidence where administrative law judge entitled to accept competent evidence establishing that pulmonary burden from occupational pneumoconiosis hastened miner's death from cancer); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Calfee v. Director, OWCP*, 8 BLR 1-7, 1-10 (1985). In assessing the conflicting evidence, the administrative law judge accorded determinative weight to Dr. Perper's conclusions that a nodule measuring more than 0.6 centimeters (6 millimeters) constitutes a macronodule; that there was more than one macronodule present measuring eight millimeters; and that aggregates of micronodules resulting in a macronodule compared to macronodules alone "are the same thing in terms of damage to the tissue." Claimant's Exhibit 6 at 15-21. Consequently, the administrative law judge found that Dr.

Goldblatt's finding of macronodules measuring 0.8 centimeters or larger and Dr. Rizkalla's diagnosis of moderately severe coal workers' pneumoconiosis with micronodules and macronodules 8.0 millimeters in diameter further bolstered the probative value of Dr. Perper's opinion. Hence, the administrative law judge credited Dr. Perper's opinion that coal workers' pneumoconiosis substantially contributed to the miner's demise because it caused hypoxemia resulting in insufficient oxygenation of the blood, which precipitated a myocardial infarction in the miner who was suffering from severe heart disease and had survived a gastrointestinal hemorrhage several days earlier. This was rational. See *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); Claimant's Exhibit 6 at 21. Thus, because the administrative law judge conducted a qualitative assessment of the conflicting medical opinion evidence by analyzing the credibility of each medical opinion considered as a whole, in light of that physician's reasoning, documentation, and credentials, we affirm the administrative law judge's finding that the opinion of Dr. Perper, as further bolstered by the opinions of Drs. Goldblatt and Rizkalla, was entitled to greater weight than the contrary opinion of Dr. Oesterling. See *Balsavage*, 295 F.3d at 397, 22 BLR at 2-396; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); Decision and Order on Remand at 13. Consequently, because the administrative law judge's analysis constituted a proper evaluation of the medical evidence, we affirm his determination that the credible evidence of record was sufficient to establish that pneumoconiosis contributed to and hastened the miner's death pursuant to Section 718.205(c). See 20 C.F.R. §718.205(c); *Lukosevicz*, 888 F.2d at 1006, 13 BLR at 2-108; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

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

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