

BRB No. 06-0827 BLA

NILA HATFIELD	)	
(Widow of EZRA HATFIELD)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ENERGY DEVELOPMENT	)	DATE ISSUED: 07/16/2007
CORPORATION	)	
	)	
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 Stephen L. Purcell, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (04-BLA-5340) of Administrative Law Judge Stephen L. Purcell awarding 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 October 18, 2001.<sup>1</sup>

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<sup>1</sup> The miner filed four claims for benefits. The first, filed on June 18, 1970, was finally denied on June 26, 1986. Director's Exhibit 1. The second, filed on February 16,

After crediting the miner with twelve years of coal mine employment, the administrative law judge found that the autopsy and medical opinion evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (4). The administrative law judge also found that the evidence established 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 argues that the administrative law judge erred in finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Claimant<sup>2</sup> responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.<sup>3</sup>

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

Because this 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>4</sup> See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director*,

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1989, was finally denied on August 10, 1989. Director's Exhibit 2. The third, filed on June 26, 1991, was finally denied on December 10, 1991. Director's Exhibit 3. The fourth, filed on March 20, 1995, was finally denied on April 2, 1996. Director's Exhibit 4.

<sup>2</sup> Claimant is the surviving spouse of the deceased miner, who died on August 18, 2001. Director's Exhibit 15.

<sup>3</sup> Because no party challenges the administrative law judge's finding that the evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), this finding is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>4</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

*OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be 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). 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); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992).

Employer argues that the administrative law judge erred in finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). In finding that the evidence established that the miner's death was due to pneumoconiosis, the administrative law judge credited the opinions of Drs. McDevitt, Racadag, and Perper, that pneumoconiosis contributed to the miner's death, over the contrary opinions of Drs. Bush and Rosenberg. Decision and Order at 11; Director's Exhibit 16; Claimant's Exhibits 1, 2; Employer's Exhibits 3, 5, 7, 8, 10, 12.

Employer argues that the administrative law judge erred in discrediting the opinions of Drs. Bush and Rosenberg. Based upon a review of the miner's autopsy slides and the medical evidence, Dr. Bush opined that the miner's coal workers' pneumoconiosis did not hasten his death. Employer's Exhibit 10. Dr. Bush opined that the miner died of cardiovascular disease, the vascular component extensively involving the brain. *Id.* Dr. Bush found that the miner's multiple strokes eventually caused a bed-ridden state that induced the development of severe bronchopneumonia, the final mechanism of his death. *Id.* Dr. Bush explained that this sequence of events is common in the general population and is unrelated to occupational exposure.<sup>5</sup> *Id.*

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- (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.
  - (4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.
  - (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).

<sup>5</sup> Dr. Bush further explained that:

Based upon his review of the miner's autopsy slides and the medical evidence, Dr. Rosenberg opined that the miner suffered from a minimal degree of simple coal workers' pneumoconiosis. Employer's Exhibit 3. Regarding the cause of the miner's death, Dr. Rosenberg stated:

The miner's death was in the setting of multiinfarct dementia, having cerebral vascular disease. The altered mental status associated with this dementia probably led to aspiration, resulting in his extensive pneumonia.

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[The miner's] death was secondary to the consequences of his neurologic condition, namely multiinfarct dementia. The lungs possess a vast respiratory reserve, and any minimal simple [coal workers' pneumoconiosis] he had, did not cause or contribute to his death. He would have died in a similar fashion irrespective of any coal mine employment that he had.

Employer's Exhibit 3; *see also* Employer's Exhibit 10.

In considering the opinions of Drs. Bush and Rosenberg, the administrative law judge stated:

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I disagree with the autopsy prosector, [Dr. Racadag], who concludes that coal workers' pneumoconiosis contributed "to the patient's illness and subsequent demise." The autopsy prosector notes that coal dust produced irreversible damage to the lungs but this damage was so minimal, affecting no more than 2 percent of the lung tissue, it could not have been in any way a significant contributor.

The pulmonary evaluations five years before death failed to indicate any significant degree of coal workers' pneumoconiosis or pulmonary impairment based on clinical, radiologic, pulmonary function studies and arterial blood gas studies. The hospital records from the admission in the last months of his life failed to indicate evidence that pulmonary disease was a factor in morbidity and mortality. The autopsy findings show the presence of a very limited degree of pneumoconiosis which, with reasonable medical certainty, was insufficient to have caused disabling impairment or contributed to death.

Employer's Exhibit 10.

It is uncontested that the [m]iner suffered from coal workers' pneumoconiosis as well as other pulmonary conditions including pneumonia at the time of his death. Dr. Bush notes terminal bronchopneumonia while Dr. Rosenberg notes extensive pneumonia and a degree of emphysema present at autopsy. Dr. Rosenberg also finds that generalized weakness was a factor in death, yet states that he is able to conclude that pneumoconiosis was not a factor. I do not find such a conclusion to be compelling in light of the contrary probative evidence of record.

While, as Dr. Bush points out, the hospital records from 2001 do not indicate that chronic obstructive pulmonary disease was a factor in the Miner's hospitalization, this does not negate the possibility that his pulmonary condition weakened the Miner and hastened his demise.

Decision and Order at 11.

The administrative law judge's sole basis for discrediting Dr. Bush's opinion is that the fact that the miner was not hospitalized in 2001 for chronic obstructive pulmonary disease did not negate the possibility that the miner's pulmonary condition might have weakened him and hastened his demise. Employer contends that, in so finding, the administrative law judge shifted the burden of proof to employer. Employer's Brief at 11-12. Employer correctly asserts that it is not its burden to negate any possibility that the miner's pulmonary condition hastened his death, but rather, it is claimant's burden to prove, by a preponderance of the evidence, that the miner's pneumoconiosis hastened his death. *See* 20 C.F.R. §718.205(a)(3), (c). In this case, however, the administrative law judge essentially presumed that the miner's pneumoconiosis must have weakened him, thereby hastening his death from other diseases. Further, the administrative law judge erred in not considering the specific reasons and explanations provided by Dr. Bush in support of his opinion that pneumoconiosis did not contribute to the miner's death. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997).

Similarly, in regard to Dr. Rosenberg's opinion, the administrative law judge noted that while the doctor acknowledged that generalized weakness was a factor in the miner's death, he still concluded that the miner's pneumoconiosis was not a factor in his death. The administrative law judge found that such a conclusion was not "compelling in light of the contrary probative evidence of record." Decision and Order at 11. The administrative law judge erred in failing to consider the reasons that Dr. Rosenberg provided for his opinion that the miner's pneumoconiosis did not contribute to his death. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-

76.

Moreover, the administrative law judge failed to identify the “contrary probative evidence of record” that called into question Dr. Rosenberg’s conclusions. Consequently, the administrative law judge’s analysis of Dr. Rosenberg’s opinion does not comport with the requirements of the Administrative Procedure Act (APA), specifically 5 U.S.C. §557(c)(3)(A), which provides that every adjudicatory decision must be accompanied by a statement of “findings and conclusions, and the reasons or basis therefore, on all the 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). On remand, the administrative law judge should explain his analysis of Dr. Rosenberg’s opinion.

Employer also contends that the administrative law judge erred in his consideration of Dr. Perper’s opinion. Based upon a review of the miner’s autopsy slides and the medical evidence, Dr. Perper opined that:

Based on the pulmonary pathological findings indicative of significant and substantial coal workers’ pneumoconiosis, and the submitted clinical information, and the worsening respiratory symptomatology with complicating pneumoconiosis, it is my professional opinion with a reasonable degree of medical certainty that there is competent medical evidence that coal workers’ pneumoconiosis was a substantial cause of [the miner’s] death and a hastening factor of his demise, although the patient’s sub-acute intra-abdominal bleeding was the major cause of death.

Claimant’s Exhibit 2.

Dr. Perper further noted that coal workers’ pneumoconiosis is well-recognized as a cause of significant mortality through a number of mechanisms. In the miner’s case, Dr. Perper stated that these mechanisms included:

1. Pulmonary insufficiency and hypoxemia by direct [sic] and replacement of normal lung tissue by non-breathing pneumoconiotic lesions and associated centrilobular chronic emphysema.
2. Precipitating a fatal arrhythmia . . . .
3. Terminal acute bronchopneumonia.

Claimant’s Exhibit 2 at 36.

In his consideration of Dr. Perper's opinion, the administrative law judge stated that:

Dr. Perper finds that the [m]iner's pneumoconiosis caused pulmonary insufficiency and hypoxemia, that it caused a fatal arrhythmia [sic] and that it caused the miner's terminal acute bronchopneumonia. I find his opinion regarding a causal relationship between the miner's terminal bronchopneumonia and his pneumoconiosis to be supported by the opinions of Dr. McDevitt, who treated the [m]iner and Dr. Racadag who actually performed the autopsy. Based on the opinions of Drs. Racadag, Perper and McDevitt, I find Claimant has established that the [m]iner's death was contributed to by his coal workers' pneumoconiosis. In this respect, I find the evidence sufficient to establish that the pneumoconiosis which every physician concedes was present in the [m]iner, did hasten his death.

Decision and Order at 11.

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). However, in this case, the administrative law judge erred in failing to provide any basis for finding that Dr. Perper's opinion regarding the cause of the miner's death was sufficiently reasoned. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. Although the administrative law judge found that Dr. Perper's opinion, that there was a causal relationship between the miner's terminal bronchopneumonia and pneumoconiosis, was supported by the opinions of Drs. Racadag<sup>6</sup> and McDevitt,<sup>7</sup> the

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<sup>6</sup> Dr. Racadag completed the miner's autopsy on August 20, 2001. In his autopsy report, Dr. Racadag listed the following final diagnoses: (1) acute lobar pneumonia and bronchopneumonia, bilateral; (2) simple coal workers' pneumoconiosis with macular and micronodular lesions; and (3) severe pleural adhesions. Director's Exhibit 16 at 1. Dr. Racadag opined that these "conditions contributed to the [miner's] illness and subsequent demise." *Id.*

<sup>7</sup> In a report dated November 11, 2004, Dr. McDevitt, the miner's treating physician, stated:

Given the [miner's] 19 year employment in the coal mines and his multiple pulmonary problems and infections over his lifetime, it is my reasoned medical opinion he suffered from coal workers[']

administrative law judge failed to address whether the opinions of these two physicians were sufficiently reasoned. *See Clark*, 12 BLR at 1-155; *Lucostic*, 8 BLR at 1-47.

Employer also contends that the administrative law judge erred in failing to address criticisms of the opinions of Drs. McDevitt, Racadag, and Perper offered by Drs. Bush and Rosenberg. We agree. Dr. Bush provided a detailed explanation for why he disagreed with the findings of Drs. McDevitt and Racadag. *See Employer's Exhibits 5, 10.* Dr. Rosenberg similarly explained why he disagreed with the conclusions of Drs. McDevitt and Perper. *See Employer's Exhibits 5, 7, 8, 12.* The administrative law judge

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pneumoconiosis. Toward the end of his life he suffered severe respiratory problems associated with shortness of breath, 2 pillow orthopnea and recurrent pneumonia. [The miner] did require oxygen. It is evident that his chronic obstructive pulmonary disease and his coal workers' pneumoconiosis contributed to the rapid deterioration in his health and subsequent death.

Claimant's Exhibit 1 at 2.

After reviewing Dr. Racadag's autopsy report, Dr. McDevitt stated:

The pathology report is full of reference to the [miner's] underlying coal worker's pneumoconiosis including diffuse black-gray mottling, scattered coal macules and black histiocytes associated with fibrosis around the bronchioles. The presence of focal fibrosis adhesions, intralobular adhesions, pleural adhesions, pleural fibrotic thickening all confirm the presence and severity of this pathology.

In summary [the miner] developed Coal Workers' Pneumoconiosis during the 19 years he worked in the coal mines. The coal workers['] pneumoconiosis deleteriously affected his health with recurrent pulmonary infections and respiratory problems. [The miner's] multiple [chest x-rays] confirm the long standing nature of his disease and the progression of same throughout his life. Finally, the autopsy report undeniably substantiates that [the miner] had coal workers['] pneumoconiosis and clearly implicates same as contributing "to the patient's illness and subsequent demise."

Id.

erred in failing to address the significance of this evidence.<sup>8</sup> *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996 (1984).

In light of the above-referenced errors, we vacate the administrative law judge's finding pursuant to 20 C.F.R. §718.205(c) and remand the case for further consideration. On remand, when reconsidering whether the medical opinion evidence establishes that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), the administrative law judge should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses.<sup>9</sup> *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

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<sup>8</sup> The administrative law judge also found that the miner's hospital treatment records and death certificate supported a finding that the miner's pneumoconiosis hastened his death. Decision and Order at 11; *see* Director's Exhibits 15, 17. The administrative law judge failed to explain how this evidence supported such a finding.

<sup>9</sup> In weighing the conflicting medical opinion evidence, the administrative law judge noted Dr. McDevitt's status as the miner's treating physician. Decision and Order at 11; Claimant's Exhibit 1. On remand, the administrative law judge should consider whether Dr. McDevitt's opinion is entitled to additional weight based upon his status as the miner's treating physician in light of the factors set out at 20 C.F.R. §718.104(d). However, Section 718.104(d) also provides that the weight given to the opinion of a treating physician shall "be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5).

The administrative law judge also relied on the fact that Dr. Racadag "actually performed the autopsy." Decision and Order at 11; Director's Exhibit 16. When evaluating the pathology-related evidence, an administrative law judge must first determine the credibility and weight of the reviewing pathologists' contrary opinions before deferring to the autopsy prosector's opinion. *Urgolites v. Bethenergy Mines, Inc.*, 17 BLR 1-20, 1-23 (1992). Should the administrative law judge on remand credit Dr. Racadag's opinion based upon his status as the autopsy prosector, he must provide an adequate rationale for concluding that the prosector's additional gross examination provided him with an advantage over the reviewing physicians under the particular facts of the case. *Id.*

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed in part and vacated in part, and the case is remanded for further consideration 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