

BRB No. 98-1319 BLA

ANN McANDREW)
(Widow of BERNARD McANDREW))
)
 Claimant-Petitioner)
)
 v.)
)
 PAGNOTTI ENTERPRISES) DATE ISSUED:
)
 and)
)
 TRAVELERS INSURANCE COMPANY)
)
 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 Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Benefits (96-BLA-1675) of

¹ Claimant, Ann McAndrew, filed a survivor's claim for benefits on March 27, 1996. Director's Exhibit 1. Mrs. McAndrew is the widow of Bernard McAndrew, the miner, who died on December 29, 1995. Director's Exhibit 3. The miner originally filed an application for benefits on June 13, 1983. Director's Exhibit 14. Initially, Administrative Law Judge

Administrative Law Judge Ainsworth H. Brown 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). Adjudicating the survivor's claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish that the miner's pneumoconiosis was a substantially contributing cause of his death pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

Claimant argues that the administrative law judge erroneously found that the miner's death was not due to pneumoconiosis pursuant to Section 718.205(c) because the administrative law judge mischaracterized the evidence of record, provided an inadequate explanation and rationale for his findings, selectively analyzed the medical opinions of record, and rendered findings that are not supported by the evidence of record.² Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, as party-in-interest, has filed a letter indicating he will not 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

Thomas W. Murrett denied benefits on the miner's claim on May 4, 1988, which the Board affirmed, *McAndrew v. Pagnotti Enterprises*, BRB No. 88-1841 BLA (Jan. 31, 1990) (unpub.). Director's Exhibit 14. Subsequently, the miner filed a petition for modification and Administrative Law Judge Paul H. Teitler denied benefits in a Decision and Order issued on August 12, 1992, which the Board affirmed, *McAndrew v. Pagnotti Enterprises*, BRB No. 92-2614 BLA (Feb. 25, 1994)(unpub.). Director's Exhibit 14. There is no evidence of record indicating that the miner pursued his claim further.

² The miner previously established the existence of pneumoconiosis arising out of his sixteen-year coal mine employment history. Director's Exhibit 14.

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).

Claimant argues that the administrative law judge’s Section 718.205(c) analysis is flawed because he relied solely on “the precipitating factor” that resulted in the miner’s hospitalization³ in determining whether pneumoconiosis contributed to the miner’s death. Claimant’s argument has merit. The administrative law judge found:

While no opinion is free of some blemish the Spagnolo-Levinson view appears to more clearly comport with *the plain language of the records themselves that clearly show what the precipitating factor was in causing the admission*. There certainly was ample evidence from the previous chest x-ray interpretations to carry a diagnosis of anthracosilicosis on a historical basis; however, its significance is the question.

Decision and Order at 5 (emphasis added). The administrative law judge purports to evaluate the medical opinions of record under the standard articulated in *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).⁴ However, his reliance on “the precipitating factor” that caused the miner’s hospital admission as a basis for analyzing the medical opinion evidence was erroneous. *Cf.* 20 C.F.R. §718.205(c)(1); Decision and Order at 5. The fact that the miner was hospitalized for, and subsequently died from, acute jaundice and acute hepatic failure does not foreclose the possibility that pneumoconiosis may have been a substantially contributing cause of his demise. *See Lukosevicz*, 888 F.2d at 1005, 13 BLR at 2-106, 107 (heart attack that caused miner’s death did not preclude pneumoconiosis from constituting substantially contributing cause). Accordingly, we vacate the

³ On August 27, 1995, the miner was admitted to Ashland Regional Medical Center, where he was treated by Dr. Weber. Consequently, the miner died on August 29, 1995. Dr. Weber listed the final diagnosis as “(1) acute hepatic failure,” and additional diagnoses were “(2) acute respiratory failure, (3) severe jaundice, (4) ulcerative esophagitis, (5) urinary tract infection, (6) cirrhosis of the liver, (7) anthracosilicosis, [and] (8) gastric hemorrhage.” Director’s Exhibit 5.

⁴ The United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises, articulated the standard applicable to Section 718.205(c) by holding that “any condition that actually hastens death, even briefly, is a substantially contributing cause of death within the meaning of the regulation.” 20 C.F.R. §718.205(c); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 1006, 13 BLR 2-100, 2-108 (3d Cir. 1989); *see Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

administrative law judge's Section 718.205(c) finding and remand the case for the administrative law judge to apply the proper standard as set forth in *Lukosevicz* to his evaluation of the relevant evidence of record. See *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

Claimant also asserts that the administrative law judge's analysis pursuant to Section 718.205(c) violates 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), because the administrative law judge failed to provide an adequate explanation to support his findings and sufficient rationale for his rejection of the medical opinions of Drs. Kraynak, Weber, and Simelaro.⁵ Although the administrative law judge noted the medical expertise of each physician, the administrative law judge failed to explain the weight, if any, accorded to the medical opinions of record, therefore, his analysis is unclear as to which opinions were

⁵ Drs. Kraynak, Weber, and Simelaro opined that the miner's anthracosilicosis was a substantially contributing factor to his death. Director's Exhibits 4, 5; Claimant's Exhibits 1, 3, 6, 7. The death certificate, completed by Dr. Weber, listed the following conditions as immediate causes of death: (a) multiple system failure, anthracosilicosis, (b) cirrhosis of the liver, (c) kidney failure, and (d) gastric hemorrhage. Director's Exhibit 3. On the contrary, Drs. Levinson and Spagnolo opined that the miner died as a direct result of acute and chronic liver failure related to his long-standing alcohol abuse and that pneumoconiosis was not a cause, contributing factor, nor hastening condition to his death. Director's Exhibit 6; Employer's Exhibits 3, 4.

more probative and entitled to dispositive weight under Section 718.205(c).⁶ Decision and Order at 5; Director's Exhibits 3-5; Claimant's Exhibits 1, 3, 6, 7. Inasmuch as the APA requires the administrative law judge to clearly set forth the reasons and bases for his factual findings and legal conclusions, *Marx v. Director, OWCP*, 870 F.2d 114, 119, 12 BLR 2-199, 2-207 (3d Cir. 1989); see *Wensel v. Director, OWCP*, 888 F.2d 14, 13 BLR 2-88 (3d Cir. 1989); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986), on remand, the administrative law judge must reconsider and reweigh all of the medical opinions of record in accordance with *Lukosevich*, and render a Decision and Order in compliance with the APA.

Claimant additionally argues that the administrative law judge selectively analyzed Dr. Weber's deposition testimony and failed to properly consider his testimony in its entirety. We agree. Dr. Weber was deposed on March 4, 1997 and testified, *inter alia*, that the physical examination of the miner's chest two days before he died was essentially normal. Claimant's Exhibit 6 at 17-21. The doctor emphasized however, that "... this was a man that wasn't breathing very deeply, that was profoundly ill and had decreased breath sounds. So ... these findings [on physical examination] were of ... limited meaning." Claimant's Exhibit 6 at 21. Moreover, Dr. Weber testified that, "acute respiratory failure" and "anthracosilicosis" were both listed among the final diagnoses and that, notwithstanding the lack of respiratory symptomatology, pneumoconiosis substantially contributed to the miner's death. Claimant's Exhibit 6 at 21-22, 25; see Director's Exhibit 5. The administrative law judge noted twice that Dr. Weber testified that physical "signs of respiratory disease were clinically absent" during the miner's hospitalization immediately preceding death, however, the administrative

⁶ When considering the issue of causation, the administrative law judge noted those physicians who discussed the results of the blood gas study administered during the miner's August 1995 hospitalization in their reports. Decision and Order at 5. The United States Court of Appeals for the Third Circuit has held that pulmonary function studies and blood gas studies "are conducted on living miners and would not be at all helpful in answering the critical question here, *i.e.*, did pneumoconiosis cause or substantially contribute to the miner's death." *Mancia v. Director, OWCP*, 130 F.3d 579, 593, 21 BLR 2-214, 243 (3d Cir. 1997).

law judge's discussion is devoid of any explanation or rationale regarding the probative value, if any, of Dr. Weber's opinion. Decision and Order at 5. Because the administrative law judge selectively credited only one portion of Dr. Weber's testimony to support a conclusion that was contrary to the remainder of the physician's testimony and reports, *see Mancia v. Director, OWCP*, 130 F.3d 579, 593, 21 BLR 2-214, 243 (3d Cir. 1997), on remand, the administrative law judge must reconsider Dr. Weber's deposition testimony in its entirety coupled with his other reports.

Finally, claimant asserts that the administrative law judge gave no consideration to her testimony with respect to the miner's breathing difficulties prior to his death and the medications that he was taking. We reject claimant's contention inasmuch as claimant's testimony is not relevant to the issue of whether pneumoconiosis substantially contributed to the decedent's death. *See* 20 C.F.R. §718.205(c)(1), (2), (3).

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is vacated, and the case is remanded for proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge