

BRB No. 99-0952 BLA

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| DIXIE W. CAMPBELL |) | |
| (Widow of BILLIE J. CAMPBELL) |) | |
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| Claimant-Respondent |) | DATE ISSUED: |
| |) | |
| v. |) | |
| |) | |
| PEABODY COAL COMPANY |) | |
| |) | |
| and |) | |
| |) | |
| OLD REPUBLIC INSURANCE COMPANY |) | |
| |) | |
| Employer/Carrier- |) | |
| Petitioners |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | DECISION and ORDER |
| Party-in-Interest |) | |

Appeal of the Decision and Order on Remand--Awarding Benefits of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Joseph Kelley (Monhollon & Kelley, P.S.C.), Madisonville, Kentucky, for claimant.

John D. Maddox (Arter & Hadden LLP), Washington, D.C., for employer.

Rita Roppolo (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand--Awarding Benefits (96-BLA-0968) of Administrative Law Judge Mollie W. Neal rendered 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 is before the Board for the second time. Initially, the administrative law judge accorded greatest weight to the report of the autopsy prosector to find that the evidence established the existence of pneumoconiosis arising out of coal mine employment which was a substantially contributing cause or factor leading to the miner's death pursuant to 20 C.F.R. §§718.202(a)(2), 718.205(c)(2). Accordingly, she awarded benefits.

Pursuant to employer's appeal, the Board vacated the administrative law judge's findings at Sections 718.202(a)(2), 718.205(c)(2) and remanded the case for her to provide her reasons for concluding that the autopsy prosector's gross examination of the miner's lungs gave the prosector an advantage over the pathologists who reviewed slides of the miner's lung tissue. *Campbell v. Peabody Coal Co.*, BRB No. 97-1580 BLA (Aug. 13, 1998)(unpub.). The Board also instructed the administrative law judge to resolve the conflicting evidence regarding whether the miner's emphysema was significantly related to or substantially aggravated by coal mine dust exposure, *see* 20 C.F.R. §718.201, and then determine whether pneumoconiosis hastened the miner's death. *See Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993).

On remand, the administrative law judge reweighed the medical evidence without according determinative weight to the autopsy prosector's report and found that the weight of the autopsy evidence established the existence of "pneumoconiosis, including emphysema related to coal mine employment." Decision and Order on Remand at 12; 20 C.F.R. §§718.202(a)(2), 718.203(b). After weighing together the x-ray readings, a CT scan reading, and the autopsy evidence, the administrative law judge again concluded that the weight of the autopsy evidence established the existence of pneumoconiosis. Additionally, the administrative law judge determined that the absence of a diagnosis of pneumoconiosis in the miner's hospital treatment records was not evidence of the absence of pneumoconiosis. Pursuant to Section 718.205(c)(2), the administrative law judge reweighed the medical reports and found that "pneumoconiosis, in the broad legal sense, hastened the miner's death." Decision and Order on Remand at 13. Accordingly, she awarded benefits.

On appeal, employer contends that the administrative law judge erred in her weighing of the medical evidence pursuant to Sections 718.202(a)(2) and 718.205(c)(2). Employer argues further that the Black Lung Disability Trust Fund (the Trust Fund) must pay any benefits due because the administrative law judge allegedly violated employer's due process rights. Claimant responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response in rebuttal to employer's argument that the Trust Fund is liable for benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 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).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his 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 the evidence establishes that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2), (4). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it hastens the miner's death in any way. *Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-116 (6th Cir. 1995); *Brown, supra*.

Review of the record reveals that in 1983 the miner developed cancer of the kidney which spread to his lungs and other tissues. Director's Exhibit 10. The miner was repeatedly hospitalized for complications of the cancer, including respiratory insufficiency and renal insufficiency. *Id.* The miner was admitted to the hospital for the last time on May 5, 1985 in a semicomatose state. The hospital treating physician reported that the miner's condition slowly deteriorated until he died on May 8, 1985. *Id.* The miner's death certificate, completed by the same physician, indicates that the miner died of "carcinoma kidney-carcinomatosis." Director's Exhibit 8.

Dr. M. David Orrahood conducted an autopsy. Based upon his microscopic examination of the miner's lung tissue, Dr. Orrahood diagnosed "coal miner's pneumoconiosis" which in his view was "associated with" advanced emphysema and bronchiectasis. Director's Exhibit 10. Dr. Orrahood reported the final diagnosis as "coal miners' pneumoconiosis (black lung with terminal cancer)," and listed bronchiectasis, emphysema, and carcinomatosis as the causes of death. *Id.*

Pathologists Drs. Naeye, Hansbarger, Cymbala, and Pitzer reviewed the autopsy report and lung tissue slides and diagnosed "coal workers' pneumoconiosis" based on the presence of coal macules in the lung tissue. Director's Exhibits 14; 28 at 48, 107-11, 113, 116-17. By contrast, pathologist Dr. Caffrey, and internal and pulmonary specialists Gallo, Broudy, and Lane concluded that the slides did not reveal "coal workers' pneumoconiosis." Director's Exhibits 11-13, 28 at 89.

Additionally, based upon the miner's coal mine employment and smoking histories, Dr. Cymbala opined that the miner's emphysema was aggravated by coal dust exposure, and that the miner's bronchiectasis was more probably due to coal dust exposure than smoking. Director's Exhibit 28 at 71-73, 79. Dr. Pitzer concluded that the miner had a "chronic pulmonary disease"

¹ Bronchiectasis is defined as chronic dilatation of the bronchi. *Dorland's Illustrated Medical Dictionary* 227 (25th ed. 1974).

predating the metastatic cancer and consisting of chronic bronchiectasis, severe emphysema, and coal workers' pneumoconiosis. Director's Exhibit 28 at 117. Dr. Pitzer at one point stated that the miner's "coal workers' pneumoconiosis" was related to coal dust exposure, and at another point seemed to suggest that he regarded the chronic pulmonary disease including emphysema and bronchiectasis to be pneumoconiosis. *Id.* Dr. Naeye, by contrast, stated that the miner's emphysema was "not likely due to coal dust exposure" based on studies that he stated show that miners with coal workers' pneumoconiosis "usually have" no more emphysema than non-miners when smoking is taken into account. Director's Exhibit 14.

Regarding whether pneumoconiosis played a causative role in the miner's death, Drs. Naeye and Hansbarger indicated that the miner's "coal workers' pneumoconiosis" was too mild to have hastened his death due to metastatic cancer. Director's Exhibits 14, 28 at 108. Dr. Cymbala believed that pulmonary complications were the mechanism of death in this case, as the miner's lungs were impaired by metastatic renal cancer and emphysema. Director's Exhibit 28 at 66, 75. Dr. Cymbala reasoned that the presence of coal workers' pneumoconiosis and coal-dust-related emphysema in the miner's lungs accelerated the miner's death from pulmonary complications by two to six weeks. Director's Exhibit 28 at 68, 79-80. Dr. Pitzer similarly stated that coal workers' pneumoconiosis and bronchiectasis with emphysema were contributing factors in the miner's death because they reduced the miner's pulmonary reserve. Director's Exhibit 28 at 117. As mentioned above, Dr. Orrahood listed bronchiectasis and emphysema "associated with" the miner's "coal miner's pneumoconiosis" as causes of death. Director's Exhibit 10.

Pursuant to Section 718.202(a)(2), the administrative law judge found the existence of pneumoconiosis established based upon the reports of Drs. Orrahood, Pitzer, Cymbala, Naeye, and Hansbarger. She relied on their diagnoses of coal workers' pneumoconiosis, and she found that Drs. Cymbala, Orrahood, and Pitzer related the miner's emphysema and bronchiectasis in part to coal dust exposure. In this regard, the administrative law judge found Dr. Naeye's statement that the emphysema was not likely due to coal dust exposure to be "somewhat equivocal. . . ." Decision and Order on Remand at 11. Also on the question of legal pneumoconiosis, the administrative law judge accorded less weight to the reports of Drs. Hansbarger, Caffrey, Gallo, Lane, and Broudy because they did not discuss the etiology of the miner's emphysema.

Employer contends that the administrative law judge mischaracterized Dr. Pitzer's opinion when she found that Dr. Pitzer related the miner's emphysema and bronchiectasis to coal dust exposure. Employer's Brief at 16. Contrary to employer's contention, review of Dr. Pitzer's two autopsy review reports reveals an ambiguity which left room for the administrative law judge to draw a reasonable inference. *See Kertesz v. Director, OWCP*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986). When asked whether the miner had "coal workers' pneumoconiosis," Dr. Pitzer

replied “yes,” and explained that the miner had “severe chronic pulmonary disease” consisting of pleural adhesions, bronchiectasis, pulmonary emphysema, coal workers’ pneumoconiosis, and metastatic carcinoma to the lung. Director's Exhibit 28 at 117. When asked whether the miner’s “pneumoconiosis” was related to coal dust exposure, Dr. Pitzer stated that the autopsy findings of “coal workers pneumoconiosis” were consistent with contracting “this disease” due to dust exposure in coal mine employment. *Id.* When asked whether “coal workers’ pneumoconiosis” contributed to death, Dr. Pitzer replied that the “chronic pulmonary disease” consisting of coal workers’ pneumoconiosis, bronchiectasis, and emphysema preexisted the carcinoma to the lungs and contributed to death by compromising the miner’s pulmonary reserve. *Id.*

The issue for the administrative law judge to resolve was whether Dr. Pitzer viewed only the clinical coal workers’ pneumoconiosis as related to coal dust, or whether he concluded that the miner’s chronic pulmonary disease, including emphysema and bronchiectasis, was related to coal dust. *See* 20 C.F.R. §718.201. The administrative law judge read Dr. Pitzer’s opinion as relating the emphysema and bronchiectasis “at least in part” to coal dust, Decision and Order on Remand at 11, apparently because of Dr. Pitzer’s wording and because Drs. Cymbala and Orrahood attributed those same two respiratory impairments in part to coal dust exposure. Director's Exhibits 10, 28. On this record, we cannot say that the administrative law judge’s reading of Dr. Pitzer’s opinion was unreasonable or a mischaracterization. *See Kertesz, supra; Lafferty v. Cannelton Industries, Inc.* 12 BLR 1-190, 1-192 (1989).

Employer also alleges deficiencies in the reports of Drs. Pitzer and Cymbala that employer asserts were corrected only by the “prompting” of claimant’s attorney, and for which the administrative law judge should have discounted their opinions. Employer's Brief at 12-13; Reply Brief at 4. This argument, however, merely calls for the Board to reweigh the evidence, which we are not empowered to do. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988).

Employer contends that the administrative law judge erred by labeling as equivocal Dr. Naeye’s opinion that the miner’s centrilobular emphysema was “not likely due to” coal dust exposure. Director's Exhibit 14. Employer argues that “not likely” means a preponderance of the evidence. Employer's Brief at 17-18. However, it is left to the administrative law judge to weigh the medical reports and draw inferences. *See Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989). Since the administrative law judge found that Drs. Cymbala, Orrahood, and Pitzer related the miner’s emphysema to coal dust, she acted within her discretion in assessing how clearly and forcefully Dr. Naeye stated the opposing view. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988). Dr. Naeye’s autopsy review report does not state that this miner’s emphysema was not related to coal dust exposure, or that it was related to smoking, but

rather, states that it was “not likely” due to coal dust because the ALFORD studies show that miners with simple coal workers’ pneumoconiosis “usually have no more emphysema than non-miners” when smoking is taken into account. Director’s Exhibit 14. On these facts, the administrative law judge rationally determined that such a statement was at least “somewhat equivocal and ambiguous. . . .” D&O Remand at 11; *see Justice, supra*.

Employer asserts that the administrative law judge inconsistently discounted Dr. Naeye’s etiology opinion as equivocal while ignoring the equivocal, unreasoned nature of Dr. Cymbala’s opinion. Employer’s Brief at 18-19. This contention lacks merit, as employer selectively quotes from Dr. Cymbala’s deposition testimony. *Id.* In the parts of Dr. Cymbala’s testimony ignored by employer, Dr. Cymbala stated clearly that the miner’s emphysema was due in part to and aggravated by coal dust exposure, and that the miner’s bronchiectasis was more probably due to coal dust exposure than smoking. Director’s Exhibit 28 at 71-73, 79. As highlighted by the administrative law judge, Dr. Cymbala based his opinion on a review of the autopsy report and slides and explained his opinion at his deposition. Substantial evidence supports the administrative law judge’s discretionary determination that Dr. Cymbala’s opinion diagnosing both clinical and legal pneumoconiosis was documented and reasoned. *See Fife v. Director, OWCP*, 888 F.2d 365, 369, 13 BLR 2-109, 2-114 (6th Cir.1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir.1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993). Therefore, we reject employer’s contention that the administrative law judge applied inconsistent standards in weighing the reports of Drs. Cymbala and Naeye.

Employer argues that the administrative law judge shifted the burden of proof to employer when she found that the opinions of Drs. Naeye, Hansbarger, and Caffrey were “insufficient to rebut” the opinions of Drs. Cymbala, Orrahood, and Pitzer relating the miner’s emphysema in part to coal dust exposure. Decision and Order on Remand at 12; Employer’s Brief at 17. Review of the administrative law judge’s Decision and Order as a whole, however, shows that she did not require employer to disprove that the emphysema was pneumoconiosis. The administrative law judge found that Drs. Cymbala, Orrahood, and Pitzer attributed the emphysema in part to coal dust. Then, she found that Dr. Naeye was equivocal in stating that the emphysema was “not likely” related to coal dust. Director’s Exhibit 14. Finally, she noted accurately that Drs. Hansbarger and Caffrey did not address the etiology of the miner’s emphysema. Director’s Exhibit 28 at 89, 108.

It was in this context that the administrative law judge then stated that the opinions of Drs. Naeye, Hansbarger, and Caffrey were “insufficient to rebut” the opinions of Drs. Cymbala, Orrahood, and Pitzer as to etiology. Decision and Order on Remand at 12. Viewed as a whole, the administrative law judge’s finding was that Drs. Naeye, Hansbarger, and Caffrey did not offer

contrary, probative reasoning on this issue. The administrative law judge did not shift the burden of proof, but rather merely weighed the evidence in light of the definition of pneumoconiosis under the Act and its implementing regulations. *See* 30 U.S.C. §902(b); 20 C.F.R. §718.201; *Jones v. Badger Coal Co.*, 21 BLR 1-102, 1-106 (1998)(*en banc*).

Employer contends that the administrative law judge failed to explain why the opinions of the more highly qualified physicians did not carry the day. Employer's Brief at 11-12. Employer's complaint is that Drs. Pitzer and Cymbala are Board-certified in Anatomical Pathology but do not possess the additional certification in Clinical Pathology held by Drs. Naeye, Hansbarger, and Caffrey, and are not certified in Internal Medicine and Pulmonary Disease as are Drs. Gallo, Lane, and Broudy. As discussed above, however, the administrative law judge explained that she declined to credit the opinion of Dr. Naeye because she found it equivocal, *see Justice, supra*, and she declined to credit the opinions of Drs. Hansbarger, Caffrey, Gallo, Lane, and Broudy because they did not address whether legal pneumoconiosis existed. *See Jones, supra*. Therefore, we reject employer's contention.

Employer argues that the administrative law judge mechanically accorded determinative weight to Dr. Simpao's diagnosis of coal workers' pneumoconiosis simply because Dr. Simpao examined the miner. Employer's Brief at 13-14. Review of the administrative law judge's Decision and Order does not support employer's contention. The administrative law judge did not base her finding of the existence of pneumoconiosis on Dr. Simpao's January 1985 report, developed in the miner's unsuccessful claim for benefits, but discussed Dr. Simpao's report only after she had already found that the weight of the autopsy evidence established the existence of pneumoconiosis. Decision and Order on Remand at 12; Director's Exhibit 26. The administrative law judge mentioned Dr. Simpao's diagnosis of "coal workers' pneumoconiosis" for the sake of thoroughness, but she did not base her finding of the existence of pneumoconiosis on a preference for Dr. Simpao as an examining physician. Director's Exhibit 26.

Employer builds on its argument that the administrative law judge based her finding of the existence of pneumoconiosis on Dr. Simpao's report to contend that the administrative law judge violated employer's due process rights such that the Trust Fund must pay benefits. Employer's Brief

² Because Dr. Caffrey wrote that "[t]he fact that the patient was a coal miner did not cause, contribute to, or hasten his death," Director's Exhibit 28 at 90, employer argues that Dr. Caffrey's statement is "broad enough to encompass" legal pneumoconiosis. Employer's Brief at 16. However, this argument does not address Dr. Caffrey's failure to discuss the etiology of the emphysema that he diagnosed.

at 14-15. Employer argues that the administrative law judge’s “evidentiary preference” for an examining physician operated as an “irrebuttable presumption” when coupled with the fact that claimant waited eight years to file her survivor’s claim. *Id.* However, as the Director responds, the cases cited by employer in support of its argument, *Consolidation Coal Co. v. Borda*, 171 F.3d 175, 183, 21 BLR 2-545, 2-559-60 (4th Cir. 1999), and *Lane Hollow Coal Co. v. Director, OWCP [Lockhart]*, 137 F.3d 799, 21 BLR 2-302 (4th Cir. 1998), involved due process violations caused by the Department of Labor’s delay in notifying the employer of potential liability, whereas there was no such delay by the Department of Labor in this case. Moreover, there is no time limit for filing a survivor’s claim. 20 C.F.R. §725.308(a). Additionally, as discussed above, the administrative law judge did not base her finding of the existence of pneumoconiosis on Dr. Simpao’s report.

There is likewise no merit to employer’s contention that the administrative law judge erred by finding that the lack of a diagnosis of pneumoconiosis in the miner’s hospital records was not evidence of the absence of pneumoconiosis. Employer’s Brief at 19. Employer misstates the law when it cites *Marra v. Consolidation Coal Co.*, 7 BLR 1-216 (1984) and argues that if a physician diagnoses only condition A, then the administrative law judge must presume that the physician did not find condition B. In *Marra*, the Board held that an administrative law judge may infer the absence of pneumoconiosis from an x-ray reading in which the physician does not mention pneumoconiosis. *Marra*, 7 BLR at 1-218-19. Whether to so infer is a question of fact to be resolved by the administrative law judge. *Id.*

Here, the administrative law judge declined to infer the absence of pneumoconiosis based on the miner’s hospital treatment records. Director’s Exhibit 10. Her finding was that the records did not indicate “that [the hospital physicians] were asked to render an opinion on pneumoconiosis or to give an etiology for the [m]iner’s emphysema/COPD,” but indicated that the hospital physicians were concerned primarily with “treating the miner’s terminal cancer and related complications.” Decision and Order on Remand at 13. This is a reasonable determination within the administrative law judge’s discretion, *see Marra, supra*, and is consistent with the hospital records. Director’s Exhibit 10. Therefore, and in light of the foregoing, we affirm the administrative law judge’s finding that the evidence established the existence of pneumoconiosis pursuant to Section 718.202(a)(2).

Pursuant to Section 718.205(c)(2), the administrative law judge found that pneumoconiosis hastened the miner’s death. The administrative law judge based her finding on the opinions of Drs. Cymbala, Orrahood, and Pitzer identifying coal workers’ pneumoconiosis, and coal-dust-related emphysema and bronchiectasis as causative factors in the miner’s death. She accorded less weight both to the opinions of Drs. Naeye and Hansbarger because they stated only that the miner’s “coal

workers' pneumoconiosis" was too mild to have hastened his death, and to the opinions of Drs. Gallo, Broudy, Lane, and Caffrey because they did not diagnose pneumoconiosis.

Employer asserts that Dr. Pitzer's opinion that "any conditions such as coal workers' pneumoconiosis, pleural fibrosis, and bronchiectasis with emphysema compromises the pulmonary reserve and would have been a contributing factor to [the miner's] death," is legally insufficient to establish that pneumoconiosis hastened death. Director's Exhibit 28 at 117. Employer argues that "under Dr. Pitzer's theory, anything that makes a person's lungs less than perfect hastens death." Employer's Brief at 21.

The hasten death standard adopted by the Sixth Circuit court encompasses those situations in which "pneumoconiosis, even if not a proximate cause of death, had a tangible effect on a miner's death." *Brown*, 996 F.2d at 815, 17 BLR at 2-138. We cannot say that Dr. Pitzer's opinion is legally insufficient under this standard, as Dr. Pitzer seems to state that pneumoconiosis had a tangible effect on the miner's death by reducing his pulmonary reserve. *See Brown, supra*. This view of the mechanism of death causation is consistent with other reports in the record credited by the administrative law judge. Dr. Cymbala believed that coal workers' pneumoconiosis and coal-dust-related emphysema hastened the miner's death from pulmonary complications by two to six weeks. Director's Exhibit 28 at 66, 68, 75, 79-80. Additionally, Dr. Orrahood indicated that advanced emphysema and bronchiectasis "associated with" the miner's pneumoconiosis were causes of death. Director's Exhibit 10. Therefore, we reject employer's contention that Dr. Pitzer's opinion is insufficient to support a finding that pneumoconiosis hastened death pursuant to Section 718.205(c)(2).

Employer contends further that the administrative law judge erred by according less weight to the death causation opinions of Drs. Naeye, Hansbarger, and Caffrey on the grounds that they addressed only whether clinical coal workers' pneumoconiosis hastened death. Employer's Brief at 21-22. However, substantial evidence supports the administrative law judge's finding, which is also consistent with law. *See Trumbo, supra; Brown, supra*; 20 C.F.R. §§718.201, 718.205(a).

Dr. Naeye's only affirmative causation statement was that the miner's "coal workers' pneumoconiosis" was too mild to have hastened his death. Director's Exhibit 14. Dr. Naeye did not state that the miner's emphysema did not hasten death; rather, Dr. Naeye stated only that the emphysema was "not likely" due to coal dust, a statement that the administrative law judge found too equivocal to be probative at Section 718.202(a)(2). *See Justice, supra*. Dr. Hansbarger also indicated that the miner's "coal workers' pneumoconiosis" was too mild to have hastened death, but

did not address the etiology of or causative role of the miner's emphysema. Director's Exhibit 28 at 108-11. Although Dr. Caffrey stated that "[t]he fact that the patient was a coal miner did not cause, contribute to, or hasten his death," he did so without discussing whether coal dust exposure aggravated the miner's emphysema or whether the emphysema hastened death. Director's Exhibit 28 at 89-92. Therefore, the administrative law judge did not err in according less weight to the opinions of Drs.

Naeye, Hansbarger, and Caffrey at Section 718.205(c)(2). Consequently, we affirm the administrative law judge's finding pursuant to Section 718.205(c)(2). *See Brown, supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

³ Because the administrative law judge gave valid reasons for according less weight to the opinions of Drs. Naeye, Hansbarger, and Caffrey, we reject employer's argument that the administrative law judge did not explain why the opinions of the more highly qualified physicians were not given greater weight. Employer's Brief at 20. We also reject employer's repeated argument that the opinions of Drs. Cymbala and Pitzer should have been discredited based upon various alleged deficiencies. Employer's Brief at 21; *see Anderson, supra; Fagg, supra*.