BRB No. 00-0746 BLA

MAELENE V. KEIL (Widow of MELVIN J. KEIL)	)	
Claimant-Respondent	)	
v.	)	
PEABODY COAL COMPANY	)	DATE ISSUED:
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 Awarding Survivor's Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson and Anne Megan Davis (Johnson, Jones, Snelling, Gilbert & Davis), Chicago, Illinois, for claimant.

W. William Prochot (Greenberg Traurig LLP), Washington, D.C., for employer.

Michelle S. Gerdano (Judith E. Kramer, Acting 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: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Survivor's Benefits (99-BLA-0442) of Administrative Law Judge Thomas M. Burke 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).[1] This case is before the Board for the second time.[2] The administrative law judge found twenty-two years of coal mine employment

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on February 21, 2001, to which all the parties, including the Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, have responded, contending that the revised regulations at 20 C.F.R. §§718.201, 718.202 and 718.205 will not affect the outcome of this case in any material way. In addition, this case involves a motion for modification filed pursuant to 20 C.F.R. §725.310 (2000), but not pursuant to the revised, and challenged, regulation at 20 C.F.R. §725.310, which is only applicable to claims filed after January 19, 2000, *see* 20 C.F.R. §725.2(c).

Having considered the briefs submitted by the parties, and reviewed the record, we hold that the disposition of this case is not impacted by the challenged regulations.

[2] Claimant is the surviving widow of the miner, Melvin J. Keil, who died on March 26, 1989, Director's Exhibits 52, 68. The miner had filed a claim on November 16, 1983, Director's Exhibit 1, which was denied on modification pursuant to 20 C.F.R. §725.310 (2000) by Administrative Law Judge Samuel B. Groner in a Decision and Order issued on August 31, 1993, Director's Exhibit 66. On appeal, the Board ultimately affirmed the denial of benefits in the miner's claim on reconsideration, Director's Exhibit 77. *Keil v. Peabody Coal Co.*, BRB No. 93-2488 BLA (Sep. 13, 1996)(on recon.)(unpub.). Although claimant filed a timely motion for modification in the miner's claim on June 20, 1997, Director's Exhibit 80, claimant subsequently requested by letter dated February 3, 2000, that the miner's claim be withdrawn, which was granted by the administrative law judge in his Decision and Order, at issue herein, Decision and Order at 4. Thus, the miner's claim is not at issue herein.

established, as agreed to by the parties, and adjudicated the survivor's claim pursuant to 20 C.F.R. Part 718. While the administrative law judge found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1) and (3), the administrative law judge found that it was established by the autopsy evidence of record pursuant to 20 C.F.R. §718.202(a)(2) and by the medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge further found that death due to pneumoconiosis was established pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were awarded. On appeal, employer initially contends that the administrative law judge did not have jurisdiction to consider this claim. Alternatively, employer contends that the administrative law judge erred in failing to determine whether claimant established a basis for modification pursuant to 20 C.F.R. §725.310 (2000), as well as in finding the existence of pneumoconiosis established pursuant to Section 718.202(a)(2) and(4), and death due to pneumoconiosis established pursuant to Section 718.205(c). Claimant responds, urging that

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Claimant filed a survivor's claim on October 16, 1989, Director's Exhibit 68. In a Decision and Order issued on April 26, 1991, Administrative Law Judge Richard D. Mills found twenty-two years of coal mine employment established, as stipulated by the parties, and adjudicated the claim pursuant to 20 C.F.R. Part 718. Judge Mills found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1)-(4) and, therefore, that death due to pneumoconiosis was not established pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

Claimant appealed, without the aid of counsel, and the Board affirmed Judge Mills's finding that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(1)-(4) and, therefore, that death due to pneumoconiosis was not established pursuant to Section 718.205(c). *Keil v. Peabody Coal Co.*, BRB No. 91-1369 BLA (Dec. 28, 1992)(unpub.). Claimant, without the aid of counsel, filed a timely motion for reconsideration, and the Board reaffirmed Judge Mills's Decision and Order denying benefits, Director's Exhibit 70. *Keil v. Peabody Coal Co.*, BRB No. 91-1369 BLA (June 13, 1995)(on recon.)(unpub.). Once more, without the aid of counsel, claimant filed a timely motion for reconsideration, requesting that the record be reopened in order to allow claimant to submit evidence of a state award of benefits to the miner, which claimant contended should have been considered *res judicata* regarding the miner's entitlement to benefits, Director's Exhibit 71. The Board granted claimant's motion for reconsideration, but denied the relief requested and advised claimant that she could instead request modification, Director's Exhibit 76. *Keil v. Peabody Coal Co.*, BRB No. 91-1369 BLA (Aug. 30, 1996)(on recon.)(unpub.).

On June 20, 1997, claimant filed a timely motion for modification, alleging a mistake of fact, at issue herein, Director's Exhibit 80.

the administrative law judge's Decision and Order Awarding Survivor's Benefits be affirmed. The Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, has not responded to 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 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Pursuant to Section 22 of the Longshore and Harbor Workers' Compensation Act (Longshore Act), 33 U.S.C. §922, as incorporated into the Act by 30 U.S.C. §932(a) and as implemented by 20 C.F.R. §725.310 (2000), a party may request modification of a denial on the grounds of a change in conditions or because of a mistake in a determination of fact. In order to establish entitlement in this survivor's claim filed after January 1, 1982, in which the miner had not been awarded benefits on a claim filed prior to January 1, 1982, *see* 30 U.S.C. §§901; 932(1), claimant must establish the existence of pneumoconiosis, *see* 20 C.F.R. §718.202; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988), and that the miner's death was due to pneumoconiosis, *see* 20 C.F.R. §§718.1; 718.205(c); *Neeley, supra; cf. Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989), which arose out of coal mine employment, *see* 20 C.F.R. §718.203; *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).[3] Moreover, the United States Court of Appeals for the Seventh

[3] None of the available presumptions pursuant to 20 C.F.R. §718.303-306 are applicable, *see* 20 C.F.R. §718.202(a)(3). These presumptions are set forth as follows: at Section 411(c)(2) of the Act, 30 U.S.C. §921(c)(2), as implemented by 20 C.F.R. §718.303; at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305; and at Section 411(c)(5) of the Act, 30 U.S.C. §921(c)(5), as implemented by 20 C.F.R. §718.306. They are inapplicable to this survivor's claim filed after January 1, 1982, *see* 20 C.F.R. §§718.303(c), 718.305(a), (e), 20 C.F.R. §718.306(a); Director's Exhibit 68. Finally,

Circuit, within whose jurisdiction this case arises, has held that a survivor may demonstrate that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death pursuant to 20 C.F.R. §718.205(c)(2) by demonstrating that the miner's pneumoconiosis resulted in hastening the miner's death to any degree, *see also* 20 C.F.R. §718.205(c)(5). *Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992).

Initially, employer contends that the administrative law judge did not have jurisdiction to consider this survivor's claim because claimant has filed "multiple" requests for modification, which employer contends is contrary to the applicable statute and regulations and the holding of the Seventh Circuit in *Midland Coal Co. v. Director, OWCP* [*Lumen*], 149 F.3d 558, 21 BLR 2-451 (7th Cir. 1998). Alternatively, employer contends that claimant's most recent request for modification was untimely filed and, therefore, should be considered a duplicate survivor's claim pursuant to 20 C.F.R. §725.309(d)(2000) and be denied as a matter of law. Finally, employer contends that allowing claimant to file multiple requests for modification has violated employer's due process rights and, therefore, that employer cannot be held liable for benefits.

The Seventh Circuit held in *Midland* that under the applicable regulations, *see* 20 C.F.R. §§802.403, 802.407, a party's appeal of an original decision by the Board must be filed within 60 days of the Board's denial of the party's first timely motion for reconsideration, and that a subsequent motion for reconsideration to the Board does not toll the time to appeal the original decision by the Board, but only the time to appeal the denial of the previous motion for reconsideration, *see* Section 10(c) of the Administrative Procedures Act, 5 U.S.C. §704; *Midland, supra*.

However, in this case, contrary to employer's contentions, claimant did not seek appellate review after the Board's previous denial of claimant's second motion for reconsideration of the Board's decision affirming the denial of benefits, Director's Exhibit 76; *Mills*, BRB No. 91-1369 BLA (Aug. 30, 1996)(on recon.), but filed a motion for modification on June 20, 1997, Director's Exhibit 80, which is the only motion for

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inasmuch as there is no evidence of complicated pneumoconiosis in the record, the irrebuttable presumption at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, is inapplicable, *see* 20 C.F.R. §§718.205(c)(3), 718.304.

modification filed by claimant in this survivor's claim. Section 22 of the Longshore Act, 33 U.S.C. §922, as incorporated into the Act by Section 422(a), 30 U.S.C. §932(a), as implemented by 20 C.F.R. §725.310, allows for modification of a claim at anytime prior to one year after the "rejection" of a claim, and Section 21(a) of the Longshore Act, 33 U.S.C. §921(a), as incorporated into the Act by 30 U.S.C. §932(a), provides that a compensation order becomes final at the expiration of the thirtieth day after it is filed in the office of the district director "unless proceedings for... setting aside the order are instituted as provided" in Section 21(b). Reading Sections 21 and 22 of the Longshore Act together and noting that an order does not become final when a petition for review is pending, the Board has held that a claim is not "rejected" within the meaning of Section 22 until the conclusion of appellate proceedings and, therefore, has held that a party may request modification of the denial of a claim by the administrative law judge within one year after the conclusion of appellate proceedings, *see Garcia v. Director, OWCP*, 12 BLR 1-24 (1988); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); *see also Stanley v. Betty B Coal Co.*, 13 BLR 1-72 (1990). Thus, inasmuch as the prior appellate proceedings before the Board did not conclude until the Board denied claimant's second motion for reconsideration on August 30, 1996, *see* Director's Exhibit 76; *Mills*, BRB No. 91-1369 BLA (Aug. 30, 1996)(on recon.), claimant's subsequent motion for modification filed on June 20, 1997, Director's Exhibit 80, was timely filed. Consequently, we reject employer's contentions.

Next, employer contends that the administrative law judge erred in considering the case on the merits without making any findings as to whether claimant established a basis for modification based on a mistake in a determination of fact and/or whether modification would render justice under the Act or violated employer's due process rights. In considering the autopsy evidence pursuant to Section 718.202(a)(2), the administrative law judge noted that because this claim "is being analyzed under the modification provisions at 20 C.F.R. §725.310, it is within the undersigned's discretion to weigh the autopsy evidence differently from that of the previous administrative law judges," Decision and Order at 19 n. 14.[4]

The intended purpose of modification based on a mistake in fact is to vest the fact-finder "with broad discretion to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted" in an effort to render justice under the Act, *see O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 257 (1971); *see also Amax Coal Co. v. Franklin*, 957 F.2d 355, 16 BLR 2-50 (7th Cir. 1992)("[a] reviewing court cannot exercise the discretion of the

[4] Inasmuch as the administrative law judge's findings that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(1) and (3) have not been challenged on appeal, they are affirmed, *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

responsible officer - it's *his* discretion to exercise - save in the unusual case where there is only one decision he could make that would be rational; and that is not a case where a *discretionary* judgement is permitted.) The administrative law judge must then determine whether reopening the claim would render justice under the Act, *see O'Keeffe*, *supra*; *Branham v. Bethenergy Mines Inc.*, 20 BLR 1-27 (1996); *see also Kinlaw v. Stevens Shipping and Terminal Co.*, 33 BRBS 68, 73 n. 7 (1999)(in the absence of newly discovered evidence which could not have been introduced previously, modification is contingent upon the fact-finder's balancing the need to render justice against the need for finality).

On modification, at issue herein, the administrative law judge considered all of the previously submitted autopsy evidence, as well as newly submitted opinions from Drs. Kleinerman and Abraham. The autopsy findings by Dr. Ramos include "dark brown pigment and slight fibrosis associated with it," Director's Exhibits 53, 68. Dr. Crouch found black particles and/or dust and anthracotic pigment, but no evidence of coal dust macules or nodules and no discernable coal workers' pneumoconiosis, along with fibrosis which he stated is a "nonspecific" reaction to a "variety of causes" and attributed to pneumonia, Director's Exhibits 61, 63, 68. Dr. Crouch stated that if anthracosis means the presence of black dust or pigment, the miner had it, but that the miner had no coal workers' pneumoconiosis or disease resulting from it. Similarly, a new opinion was submitted by Dr. Kleinerman, who reviewed the autopsy evidence and found black granular pigment, "nonspecific" interstitial fibrosis, but no macules or nodules of simple coal workers' pneumoconiosis and no coal workers' pneumoconiosis, Employer's Exhibit 3. Contrary opinions were provided by Dr. Jones and Dr. Abraham. Dr. Jones found emphysema with fibrosis and anthracotic pigment which he stated was diagnostic of coal workers' pneumoconiosis, Director's Exhibits 64, 68. In a new opinion, Dr. Abraham stated he had reviewed the autopsy evidence and found mixed dust, including some consistent with coal mine dust, from the miner's coal mine employment, associated with interstitial fibrosis, which he stated was pneumoconiosis, Claimant's Exhibit 1.

While all of the physicians, as the administrative law judge noted, found black, dark or anthracotic pigment or coal mine dust and fibrosis, they disagreed as to whether the pigment or dust was associated with the fibrosis. Decision and Order at 20-21. The administrative law judge gave greater weight to the autopsy prosector's opinion, that the miner's pigment was associated with fibrosis, as he reviewed the miner's entire respiratory system, over the contrary opinion of Dr. Crouch. The administrative law judge also found that Dr. Kleinerman did not adequately explain his finding that the miner's fibrosis was of nonspecific origin. The administrative law judge further found insignificant the findings of no coal dust or coal workers' pneumoconiosis macules or nodules, as noted by Drs. Crouch and Kleinerman, since these macules and/or nodules are not required by the regulations for a diagnosis of pneumoconiosis and the administrative law judge credited the findings of anthracotic pigment or dusts from coal mine employment associated with fibrosis from Drs.

Jones and Abraham, which he found sufficient to establish coal workers' pneumoconiosis, as they were consistent with the autopsy prosector's findings.[5]

Employer contends that the administrative law judge erred and/or substituted his own opinion to find that the autopsy prosector's opinion supported a finding of pneumoconiosis and mechanically gave greater weight to the autopsy prosector's opinion, even though his diagnosis of pigment and associated fibrosis was based on the same microscopic evidence reviewed by Drs. Crouch and Kleinerman and not his gross examination findings. In addition, employer contends that the administrative law judge's finding is inconsistent with his finding under Section 718.202(a)(4), where the administrative law judge credited the opinion of a non-examining physician over an examining physician's opinion.

[5] Although employer contends that the administrative law judge erred in rejecting the opinions of Drs. Crouch and Kleinerman, who required findings of coal dust or coal workers' pneumoconiosis macules or nodules, as such findings are not required by the regulations, the administrative law judge properly determined that the findings of anthracotic pigment or dusts from coal mine employment associated with fibrosis from Drs. Jones and Abraham were sufficient to establish pneumoconiosis as more broadly defined by the Act and regulations, *see* 30 U.S.C. §902(b); 20 C.F.R. §718.201.

Contrary to employer's contentions, the administrative law judge permissibly gave greater weight to the opinion of the autopsy prosector, *see Peabody Coal Co. v. Shonk*, 906 F.2d 264 (7th Cir. l990), and reasonably found that the prosector's opinion supported the findings of Drs. Jones and Abraham that the miner's anthracotic pigment or dust associated with fibrosis arose from his coal mine employment, which are sufficient to establish pneumoconiosis as more broadly defined by the Act and regulations, *see* 30 U.S.C. §902(b); 20 C.F.R. §718.201. It is within the administrative law judge's discretion, as the trier-of-fact, to determine the weight and credibility to be accorded the medical experts, *see Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984), and to assess the evidence of record and draw his own conclusions and inferences therefrom, *see Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986), and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge when his findings are rational and supported by substantial evidence, *see Franklin*, *supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, we affirm the administrative law judge's finding that the existence of pneumoconiosis was established under Section 718.202(a)(2) as rational and supported by substantial evidence.[6]

[6] Inasmuch as the administrative law judge's findings under Section 718.202(a)(2) that

the opinions of Drs. Jones and Abraham, as supported by the prosector's opinion, establish that the miner's anthracotic pigment or dust associated with fibrosis arose from his coal mine employment, which is sufficient to establish pneumoconiosis as more broadly defined by the Act and regulations, *see* 30 U.S.C. §902(b); 20 C.F.R. §718.201, any error by the administrative law judge in not specifically considering whether pneumoconiosis arising out of coal mine employment was established pursuant to 20 C.F.R. §718.203, *see Boyd, supra*, was harmless, *see Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Moreover, we reject employer's contention that the administrative law judge erred, in this case arising within the jurisdiction of the Seventh Circuit, in failing to weigh all like and unlike evidence together under Section 718.202(a). Establishing pneumoconiosis under one of the four methods pursuant to Section 718.202(a)(1)-(4) obviates the need to do so under any of the other methods, *see* 20 C.F.R. §718.202(a)(1)-(4); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *see also Beatty v. Danri Corp.*, 16 BLR 1-11 (1991), *rev'd and aff'd on other grounds*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995). Consequently, inasmuch as the administrative law judge's finding that the existence of pneumoconiosis was established pursuant to Section 718.202(a)(2) is affirmed, we need not address employer's contentions and the administrative law judge's findings under Section 718.202(a)(4), *see Dixon, supra*; *see also Beatty, supra*.

Finally, employer contends that the administrative law judge erred in finding death due to pneumoconiosis established pursuant to Section 718.205(c). The administrative law judge considered the relevant medical opinion evidence pursuant to Section 718.205(c), which included the originally submitted opinions of Dr. Jones, who diagnosed coal workers' pneumoconiosis, found that the miner's final hospital admission was for his pulmonary condition, and stated that he believed that the miner was eligible for black lung death benefits, Director's Exhibits 54, 68. The administrative law judge also considered the opinion of Dr. Overton, the miner's treating physician, who believed that the miner's underlying pneumoconiosis contributed significantly to the miner's death, Director's Exhibit 68. In addition, a new opinion from Dr. Cohen was submitted. He reviewed the evidence and found that coal workers' pneumoconiosis contributed to the miner's death and stated that the miner would have lived longer had he not had underlying damage to his lungs from his coal dust exposure, Claimant's Exhibits 6-7.[7] Contrary opinions were provided by Dr. Tuteur, who found no coal workers' pneumoconiosis and, therefore, that the miner's death was not caused or hastened by his coal dust exposure or coal workers' pneumoconiosis, Employer's Exhibit 4; Director's Exhibits 61-62, 68, and Dr. Kleinerman, who found that the miner's death was due to an intracranial hemorrhage and pulmonary thromboemboli, neither of which was caused by coal dust exposure or coal workers' pneumoconiosis and that coal dust exposure and coal workers' pneumoconiosis had not hastened the miner's death. Finally, Dr. Crouch found no coal workers' pneumoconiosis and that the miner's death was due to a cerebral hemorrhage, not caused by or related to pulmonary disease, Director's Exhibits 61, 63, 68.

The administrative law judge permissibly found that the opinions of Drs. Kleinerman and Tuteur were based on the erroneous premise that the miner did not have coal workers' pneumoconiosis, *see Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986), and found that Dr. Crouch did not adequately explain the development of the miner's cerebral hemorrhage, whereas the opinions of Drs. Cohen and Jones, that coal workers' pneumoconiosis, as more

[7] Contrary to employer's contention, Dr. Cohen's opinion that the miner would have lived longer had he not had underlying damage to his lungs from his coal dust exposure, Claimant's Exhibits 6-7, is sufficient to demonstrate that the miner's coal dust exposure or pneumoconiosis hastened the miner's death in accordance with the standard enunciated in *Railey, supra*, *see* 20 C.F.R. §718.205(c)(5).

broadly defined by the Act and regulations, *see* 30 U.S.C. §902(b); 20 C.F.R. §718.201, contributed to the development of the miner's cerebral hemorrhage and hastened the miner's death, provided a more thorough and/or complete explanation regarding the development and cause of the miner's cerebral hemorrhage and death. Decision and Order at 22.

It is for the administrative law judge, as the trier-of-fact, to assess the evidence of record and determine whether a party has met its burden of proof, *see Maddaleni*, *supra*; *Kuchwara*, *supra*, and an administrative law judge may give less weight to a physician's opinion, such as Dr. Crouch's, when he finds that the physician does not adequately explain his finding, *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*), or bases his opinion on an incomplete picture of the miner's health condition, *see Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986), and may give more weight to a physician's opinion, such as from Drs. Cohen and Jones, which he finds based on a more thorough review of the evidence of record, *see Hall v. Director, OWCP*, 8 BLR 1-193 (1985). Thus, inasmuch as it is for the administrative law judge, as the trier-of-fact, to determine whether an opinion is documented and reasoned, *see Clark, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985), and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge when his findings are rational and supported by substantial evidence, *see Franklin, supra*; *Anderson, supra*; *Worley, supra*, we affirm the administrative law judge's finding that death due to pneumoconiosis was established pursuant to Section 718.205(c) as rational and supported by substantial evidence, *see Railey, supra*; *Smith, supra*; *Neeley, supra*.

Nevertheless, the administrative law judge did not, as employer contends, specifically address whether reopening this claim and/or granting modification would render justice under the Act, *see O'Keeffe, supra*; *Branham, supra*; *Kinlaw, supra*. Consequently, we remand the case for the administrative law judge to determine whether reopening this claim and/or granting modification would render justice under the Act, *see O'Keeffe, supra*; *Branham, supra*; *see also Kinlaw, supra*.

Accordingly, the administrative law judge's Decision and Order Awarding Survivor's Benefits is affirmed in part, in regard to the administrative law judge's findings on the merits that the existence of pneumoconiosis was established under Section 718.202(a)(2) and that death due to pneumoconiosis was established pursuant to Section 718.205(c), but the case is nevertheless remanded for further consideration as to whether reopening this claim and/or granting modification pursuant to Section 725.310 (2000) would render justice under the Act.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge