

BRB No. 06-0609 BLA

ANNA MAE VRANA )  
(Widow of JOSEPH F. VRANA) )  
 )  
 Claimant-Respondent )  
 )  
 v. )  
 )  
 SHANNOPIN MINING COMPANY ) DATE ISSUED: \_\_\_\_\_  
 )  
 and )  
 )  
 INTERNATIONAL BUSINESS AND )  
 MERCANTILE REASSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier-Petitioners )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order on Remand - Awarding Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Anna Mae Vrana, Carmichaels, Pennsylvania, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

Helen H. Cox (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand - Awarding Benefits (03-BLA-5969) of Administrative Law Judge Daniel L. Leland 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. When this case was previously before the Board, the Board vacated Administrative Law Judge Gerald M. Tierney's denial of benefits based on his finding that the evidence did not establish that the miner's death was due to pneumoconiosis, pursuant to 20 C.F.R. §718.205(c), and remanded the case for further consideration. *Vrana v. Shannopin Mining Co.*, BRB No. 05-0380 BLA (Nov. 30, 2005)(unpub.). The Board instructed the administrative law judge to discuss: the miner's hospitalization records regarding his cardiac history; the medical treatment provided the miner by Drs. Jaworski and Anderson for his cardiac condition, considering that Drs. Jaworski and Anderson were the miner's treating physicians;<sup>2</sup> the specific objective evidence that corroborated or supported Dr. Fino's opinion, and the claimant's hearing testimony.

On remand, as Judge Tierney was no longer with the Office of Administrative Law Judges, the case was reassigned to Administrative Law Judge Daniel L. Leland (the administrative law judge). Noting the Board's remand instructions, the administrative law judge considered claimant's hearing testimony concerning the miner's severe breathing problems before he died. Considering the opinions of Drs. Jaworski, Anderson, and Fino, the administrative law judge found that the opinions of Drs. Jaworski and Anderson were entitled to greater weight than the contrary opinion of Dr. Fino, because their opinions were well-reasoned and documented, and because they were the miner's treating physicians. The administrative law judge accorded less weight to the opinion of Dr. Fino because Dr. Fino never examined the miner, his findings were based solely on review of the miner's medical records, and he relied on statistical data. Based on the opinions of Drs. Jaworski and Anderson, the administrative law judge concluded that

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<sup>1</sup> Claimant is the widow of a miner, who died on February 10, 2000. Director's Exhibit 8. Claimant filed her application for survivor's benefits on June 14, 2002. Director's Exhibit 3.

<sup>2</sup> The Board noted that because this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, the opinions of Drs. Jaworski and Anderson may be entitled to special deference in accordance with the holding pronounced in *Soubik v. Director, OWCP*, 366 F.3d 226, 23 BLR 2-82 (3d Cir. 2004) (Roth, J., dissenting). *Vrana v. Shannopin Mining Co.*, BRB No. 05-0380 BLA (Nov. 30, 2005) (unpub.).

pneumoconiosis was a substantially contributing factor in the miner's death. 20 C.F.R. §718.205(c). Accordingly, benefits were awarded, commencing February 1, 2000, the first day of the month in which the miner died.

On appeal, employer argues that the administrative law judge erred in giving greater weight to the opinions of Drs. Jaworski and Anderson because they were treating physicians, and erred in finding that the evidence supported a finding of death due to pneumoconiosis. In response, claimant, without the assistance of counsel, urges affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, also urges affirmance of the award of benefits.

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).

To establish entitlement to survivors' benefits, claimant must establish that the miner suffered from pneumoconiosis, that his pneumoconiosis arose 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 pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). 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); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

Employer contends that the administrative law judge erred in giving greater weight to the opinions of Drs. Jaworski and Anderson because they were treating physicians. Employer contends that the administrative law judge is not required to credit the opinions of treating physicians, unless he finds that the treating physicians gained some advantage by virtue of treating the miner. Employer's Brief at 10. We agree.

We recognize that the opinions of treating physicians may be entitled to special deference, *Soubik v. Director, OWCP*, 366 F.3d 226, 23 BLR 2-82 (3d Cir. 2004) (Roth, J., dissenting). As employer contends, however, this deference is not automatic or mandatory. See *Lango v. Director, OWCP*, 104 F.3d 573, 577, 21 BLR 2-12, 2-20 (3d Cir. 1997). Rather, a treating physician's opinion gets the deference it deserves based on

its power to persuade. *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003).<sup>3</sup>

Further, a doctor's opinion may not be rejected solely because the doctor did not examine the miner. *See Worthington v. United States Steel Corp.*, 7 BLR 1-522 (1984); *Newland v. Consolidation Coal Co.*, 6 BLR 1-1286 (1984); *Hall v. Consolidation Coal Co.*, 6 BLR 1-306 (1984). In weighing doctors' opinions, the administrative law judge is called upon to consider their quality, taking into account, among other things, the opinions' reasoning and detail of analysis. *See Milburn Colliery Coal v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *see also Risher v. Director, OWCP*, 940 F.2d 327, 15 BLR 2-186 (8th Cir. 1991)(an administrative law judge may disregard a medical opinion that does not adequately explain the basis for its conclusion).

In this case, the administrative law judge found that the opinions of Drs. Jaworski and Anderson were well-reasoned and documented and that they were entitled to special deference as they were provided by the miner's treating physicians. The administrative law judge noted that Dr. Jaworski, who was Board-certified in internal medicine and pulmonary disease, had evaluated the miner's pulmonary condition on a number of occasions between 1997 and 2000, seeing the miner both in the hospital and office, and that Dr. Anderson had treated the miner's heart condition "for many years." Decision and Order at 5. The administrative law judge accorded less weight to the opinion of Dr. Fino because he never examined the miner, and because his findings were based solely on a review of the miner's medical records and on statistical data.

However, the administrative law judge never discussed the fact that Dr. Jaworski, while stating that the miner's chronic obstructive pulmonary disease put an additional strain on his heart, also conceded that the miner would have died due to his heart disease, regardless of any lung disease. Nor, as employer contends, did the administrative law judge discuss 1) Dr. Jaworski's opinion as it related to the miner's death certificate, which listed as the causes of the miner's death: ventricular tachycardia, atrial fibrillation, and ischemic cardiomyopathy, Director's Exhibit 8, or 2) whether Dr. Jaworski knew of the miner's aneurysm. The administrative law judge also did not discuss evidence in the record that the miner had a fifty-five year smoking history. Regarding the opinion of Dr.

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<sup>3</sup> Employer additionally contends that the administrative law judge erred in his application of 20 C.F.R. §718.104(d) to this case. The regulation set forth in Section 718.104 is inapplicable to the instant case, as this regulation only applies to evidence developed after January 19, 2001. Because the report of Dr. Jaworski is dated June 2, 2000 and the report of Dr. Anderson is dated September 20, 2000, these physicians' reports were developed prior to January 19, 2001, the effective date of Section 718.104(d). Director's Exhibits 9, 11, 13, 29.

Fino, the administrative law judge did not discuss it in terms of Dr. Fino's review of the miner's complete medical record.

Moreover the administrative law judge did not resolve the dispute among the physicians concerning the source of the miner's lung disease, a question critical to determining whether the miner's death was due to pneumoconiosis.<sup>4</sup> The administrative law judge failed to resolve the inconsistency in the record concerning the miner's smoking history or to recognize that Dr. Jaworski, on whose opinion the administrative law judge relied, acknowledged that the miner had a fifty-five pack year smoking history and that that factor might make a difference in his opinion about the cause of the miner's chronic obstructive pulmonary disease. Director's Exhibit 13 at 24 (Jaworski deposition). Further, as employer contends that the administrative law judge failed to consider the fact that Dr. Jaworski only stated that the miner's lung disease *probably* contributed to death, *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988),<sup>5</sup> or that Dr. Jaworski conceded that, the miner's very significant cardiac problems or his ventricular aneurysm could have caused death, even absent any other condition. Moreover, the administrative law judge erred in rejecting Dr. Fino's opinion because it relied heavily on statistical data without explaining why the assumptions of Drs. Anderson and Jaworski were more credible than the scientific literature.

In light of the foregoing, we vacate the administrative law judge's finding that the medical opinion evidence established that the miner's pneumoconiosis substantially contributed to his death, and remand the case for the administrative law judge to provide a more complete discussion of the medical opinions on the cause of death. *See Lango*, 104 F.3d at 577, 21 BLR at 2-20-21; *see Williams*, 338 F.3d at 513, 22 BLR at 2-647; *U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999).

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<sup>4</sup> Dr. Fino opined that the miner's death was due exclusively to cigarette smoking, while Drs. Jaworski and Anderson felt that it was due to a combination of cigarette smoking and coal dust exposure.

<sup>5</sup> Dr. Jaworski opined, "that [the miner's] chronic underlying lung disease, secondary to both cigarette smoking and his exposure to coal dust certainly contributed to his markedly decreasing symptoms prior to his death and *probably* also contributed to his death from the increased work load placed on his heart." Director's Exhibit 11. In a one-page report dated September 20, 2000, Dr. Anderson stated that he agreed with Dr. Jaworski. Claimant's Exhibit 1.

Accordingly, the Decision and Order on Remand - Awarding Benefits of the administrative law judge is vacated and the case is remanded for 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