

BRB No. 08-0684 BLA

B.B. on behalf of P.B.)
(Widow of A.B.))

Claimant-Respondent)

v.)

EASTERN COAL COMPANY, C/O)
PITTSTON COAL GROUP)

and)

DATE ISSUED: 06/30/2009

THE PITTSTON COMPANY, C/O)
ACORDIA EMPLOYERS SERVICE)

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 Awarding Benefits and the Decision and Order Denying Employer's Motion for Reconsideration of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Lois A. Kitts and James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer/carrier.

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

McGRANERY, Administrative Appeals Judge:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits and the Decision and Order Denying Employer's Motion for Reconsideration (07-BLA-5259) of Administrative Law Judge Thomas F. Phalen, Jr., rendered 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 The administrative law judge found that the parties' stipulation to thirty years of coal mine employment was supported by the record.² The administrative law judge further found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3). Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge found that the only medical report in evidence, Dr. Yajnik's letter dated May 2, 1983, established the existence of legal pneumoconiosis³ in the form of chronic obstructive pulmonary disease (COPD) due to the miner's coal mine employment. The administrative law judge further found that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). Finally, the administrative law judge found Dr. Yajnik's notation on the miner's death certificate, that "COPD" was an "Other significant condition" contributing to death, to be sufficient to establish 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 asserts that the administrative law judge erred in relying on Dr. Yajnik's opinion to find the existence of legal pneumoconiosis established, and that

¹ The miner died on October 29, 1990. Director's Exhibit 15. The miner's widow, P.B., filed this claim on June 25, 2003. Director's Exhibit 2. She died while her claim was pending before the Office of Administrative Law Judges, and the case was remanded to the district director to determine whether there was a proper party to pursue the widow's claim. The district director substituted B.B., the widow's surviving adult child, as the claimant. Subsequently, in adjudicating the claim, the administrative law judge found that B.B. is a proper party, and he denied employer's motion for reconsideration on that issue. On appeal, employer does not challenge the administrative law judge's determination that B.B. is a proper party to this claim. That determination is therefore affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

² The record indicates that the miner's coal mine employment was in Kentucky. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

³ Legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

the miner's death was due to pneumoconiosis. Neither claimant nor the Director, Office of Workers' Compensation Programs, has submitted a brief in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, 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. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner's death, or was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. Death will also be considered due to pneumoconiosis if the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §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); *Mills v. Director, OWCP*, 348 F.3d 133, 136, 23 BLR 2-12, 2-17 (6th Cir. 2003). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

In determining whether claimant established entitlement to benefits, the administrative law judge considered all of the evidence of record, including positive and negative interpretations of an April 27, 1983 x-ray by Drs. Kim and Wiot, respectively, and Dr. Wright's positive interpretation of an August 20, 1983 x-ray.⁴ Decision and Order at 4-6, 8; Claimant's Exhibits 2, 4; Director's Exhibit 35. The administrative law judge also considered the results of a pulmonary function study administered on August 25, 1983, and a pulmonary function study identified by claimant as having been performed on April 26, 1983.⁵ Decision and Order at 4-5; Claimant's Exhibits 3, 5.

⁴ The administrative law judge found that the x-ray evidence did not establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

⁵ The date is illegible on the pulmonary function study identified by claimant as having been performed on April 26, 1983. Claimant's Exhibit 5. The record also contains the results of a pulmonary function study performed on August 12 or 15, 1983,

Finally, the administrative law judge considered a letter dated May 2, 1983 from the miner's treating physician, Dr. Yajnik, as well as the miner's death certificate, also completed by Dr. Yajnik. Decision and Order at 4-6; Director's Exhibits 14, 15.

In his May 2, 1983, letter, Dr. Yajnik stated that the miner was under his care for "multiple medical problems including COPD." Director's Exhibit 14. Dr. Yajnik opined that the miner suffered from "moderate to severe COPD as a result of his occupation as a coal miner," and he indicated that his letter included copies of the results of a pulmonary function study, a blood gas study, and a chest x-ray he had recently administered.⁶ Director's Exhibit 14. The objective tests referenced by Dr. Yajnik are not associated with the copy of the letter in the record, and the record contains no treatment records from Dr. Yajnik.

In considering Dr. Yajnik's opinion, the administrative law judge noted claimant's testimony that Dr. Yajnik treated the miner for approximately twenty years. The administrative law judge found that Dr. Yajnik's opinion was sufficient to support a finding of legal pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(4):

Dr. Yajnik's letter indicates that he conducted pulmonary function tests, a chest x-ray, and an arterial blood gas study before May 1983, and that based on his objective findings and the Miner's symptoms, he diagnosed pneumoconiosis. No contrary probative evidence was introduced. Therefore, while the evidence regarding the existence of clinical pneumoconiosis is insufficiently documented, there is sufficient evidence to support a finding of legal pneumoconiosis. I give Dr. Yajnik's opinion probative weight. I find that the Claimant has proven the existence of pneumoconiosis on the basis of well documented and well reasoned medical opinion evidence.

Decision and Order at 10. The administrative law judge further found that Dr. Yajnik's opinion, taken together with his opinion as set forth on the death certificate, was sufficient to support a finding that the miner's death was due to pneumoconiosis, pursuant to 20 C.F.R. §718.205(c):

and a blood gas study administered on August 25, 1983. Claimant's Exhibit 5. It is unclear whether these additional studies were admitted into evidence.

⁶ Dr. Yajnik did not specify the dates of the items to which he referred. Dr. Yajnik stated that a pulmonary function study reflected "moderate to severe obstructive lung disease with advanced involvement of the small airways." Director's Exhibit 14.

In the present case, it is uncontradicted that Dr. Yajnik treated the miner for his COPD for at least ten, and possibly as long as twenty, years. Dr. Ya[j]nik's letter explains that he diagnosed the Miner with pneumoconiosis after a series of objective tests over the course of his treatment and that, in his opinion, the miner's lung impairment was caused by his coal mine employment. Seven years after this letter was prepared, Dr. Ya[j]nik listed pneumoconiosis as a significant condition that contributed to death. I find that Dr. Ya[j]nik had a long term relationship to the Miner as his treating physician, and had personal knowledge from which to address the Miner's cause of death. Based on the record of Dr. Ya[j]nik's treatment as the Miner's treating physician . . . and the uncontroverted medical conclusion that the Miner had pneumoconiosis and that substantially contributed to his death, I find that the Claimant has established that the miner's death was due to pneumoconiosis.

Decision and Order at 10-11.

Employer contends that the administrative law judge erred in finding that Dr. Yajnik's report was well-documented and reasoned, when the unidentified tests underlying the doctor's report are not of record, and the report lacks explanation. Employer's Brief at 7-8. Employer argues further that the administrative law judge's reliance on Dr. Yajnik's report was inconsistent with the evidentiary limitations at 20 C.F.R. §725.414, because the report referred to tests that are not of record.⁷ Employer's Brief at 8-9.

On the facts of this case, we hold that the administrative law judge acted within his discretion in crediting Dr. Yajnik's opinion. The case at bar arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit which has repeatedly held that it is for the administrative law judge, as factfinder, to decide whether a report is sufficiently documented and reasoned because such a determination is essentially a credibility matter within the purview of the administrative law judge. *See Wolf Creek Collieries v. Director, OWCP [Stephens]*, 298 F.3d 511, 22 BLR 2-494 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). In the instant case, the administrative law judge credited the miner

⁷ Section 725.414 provides, in relevant part, that “[a]ny chest X-ray interpretations, pulmonary function test results, [or] blood gas studies . . . that appear in a medical report must each be admissible under” the limitations of 20 C.F.R. §725.414(a), or admissible as a hospitalization or medical treatment record under 20 C.F.R. §725.414(a)(4). 20 C.F.R. §725.414(a)(2)(i).

with “at least thirty years of coal mine employment.” Decision and Order at 10. The record contains a letter dated May 2, 1983 and a death certificate dated November 2, 1990, both signed by Dr. Yajnik, the miner’s family physician who had treated the miner for at least ten years, and possibly twenty years, prior to the miner’s death. Decision and Order at 9-10. In his 1983 letter to an attorney, Dr. Yajnik stated that he had treated the miner for multiple medical problems, including COPD, which the doctor attributed to coal mine employment. He stated that his investigation into the extent of the miner’s lung disease had included an x-ray examination, as well as pulmonary function and blood gas testing. He explained that a pulmonary function test showed that the miner had moderate to severe obstructive lung disease with advanced involvement of the small airways. The doctor concluded that the miner had suffered significant damage to his lungs “due to pneumoconiosis” and that he was totally and permanently disabled. Director’s Exhibit 14. Although the doctor stated that the reports of the studies he performed were included with his letter, they were not with the letter in the record.

The doctor’s letter was dated 1983, the year when, according to the testimony of the miner’s widow, he left coal mine employment because he was no longer able to work. She testified that the miner had taken a pill for his breathing problems, which had occasionally required hospitalization. Director’s Exhibit 16 at 13. The administrative law judge found that the miner had a thirty-three year smoking history and that he had quit smoking ten years before his death. Decision and Order at 6. Finally, the death certificate signed by Dr. Yajnik, shows that the miner’s death was caused by pneumonia in the left lung and that other significant conditions which contributed to death included Alzheimer’s disease and COPD. Director’s Exhibit 15. The administrative law judge determined to credit Dr. Yajnik’s diagnosis of legal pneumoconiosis because he was the miner’s longstanding treating physician; he had based his diagnosis on objective findings and symptoms; and there was no contrary probative evidence. Decision and Order at 10. The administrative law judge determined to credit Dr. Yajnik’s opinion that legal pneumoconiosis contributed to death because, as the miner’s treating physician, Dr. Yajnik had personal knowledge of the miner’s condition and the record corroborates the underlying basis for the physician’s conclusion. Decision and Order at 10.

Initially, we reject employer’s argument that the administrative law judge erred in finding Dr. Yajnik’s letter documented and reasoned. The Sixth Circuit has held that the determination of whether a medical report is adequately documented is committed to the administrative law judge’s discretion, as is the determination of whether a report is adequately reasoned. *See Stephens*, 298 F.3d at 522, 22 BLR at 2-513; *Groves*, 277 F.3d at 236, 22 BLR at 2-330. Employer’s reliance on *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983) proves the point. In *Rowe*, the Sixth Circuit held that the Board had been correct in finding that the administrative law judge had erred in awarding benefits based upon a medical opinion which failed to diagnose a totally disabling impairment. Nevertheless, the Board had gone on to affirm the administrative

law judge's award of benefits because his decision was supported by another medical opinion in the record, that of Dr. Odom, which had been based on an x-ray, pulmonary function study, medical history and physical examination. *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. The court held that the Board had usurped the authority of the administrative law judge in crediting the doctor's opinion. In addition, the court noted that there were problems with Dr. Odom's opinion:

The validity of Dr. Odom's opinion is certainly open to attack. First, the x-ray which he found to be positive for pneumoconiosis (but apparently still insufficient to establish an interim presumption pursuant to 20 C.F.R. §727.203(a)(1)) was later found to be unreadable by more qualified readers. Second, the pulmonary function study noted by the Board as documentation was inconclusive. Dr. Odom stated his belief "that more sophisticated pulmonary function tests will demonstrate a pulmonary impairment," but no such tests are in the record. Finally, Dr. Odom's report on Rowe's medical history contains no mention of Rowe's smoking habit.

Rowe, 710 F.2d at 255 n.36, 5 BLR at 2-103 n.36. What is significant about *Rowe* is that the court held that despite major flaws in Dr. Odom's opinion, it could still be credited by the administrative law judge. For that reason, the court did not reverse the decision awarding benefits; it vacated the decision and remanded the case for the administrative law judge to determine the credibility of Dr. Odom's report. Thus, employer's reliance on *Rowe* is misplaced.

The authority which most closely resembles the facts and arguments in the instant case is the Sixth Circuit's decision in *Stephens*. The administrative law judge in *Stephens* credited the opinion of Dr. Hieronymus, who had been the miner's treating physician from 1981 until his death in 1989. The doctor testified that he had diagnosed pneumoconiosis based on a positive x-ray, a thirty-five year history of coal mine employment, decreased breath sounds, wheezing, and nail clubbing. He did not reference pulmonary function or blood gas testing. Hospital records during the year of the miner's death showed the doctor's continued treatment of the miner for COPD and respiratory failure. On the death certificate, Dr. Hieronymus recorded the cause of death as respiratory failure secondary to pneumonia due to coal workers' pneumoconiosis and chronic obstructive pulmonary disease.

The record in *Stephens* also contained the medical reports of Drs. Broudy and Wright, who both had examined the miner only once, in 1981, eight years prior to his death. They both attributed the miner's respiratory impairment to an extensive smoking history, not to his thirty-five year history of coal mine employment. The administrative law judge found that the miner had a smoking history of about fifty years, which was the same history upon which Dr. Wright relied. Dr. Broudy had relied upon a thirty-year

history. Although the administrative law judge was troubled that Dr. Hieronymus had considered the miner to have been a light smoker, with only a five-year history of smoking, the administrative law judge determined that this misinformation was not sufficient to discredit Dr. Hieronymus's opinion. The administrative law judge concluded: "Because Dr. Hieronymus treated the miner for over nine years up until his death and there are no contrary medical reports more recent than 1981, I give the most weight to the opinion of Dr. Hieronymus." *Stephens*, 298 F.3d at 516, 22 BLR at 2-501. The administrative law judge found that pneumoconiosis contributed to the miner's death and he awarded benefits to the miner's survivor.

Employer petitioned for modification of the award in *Stephens*. In support of its petition, employer offered the opinions of Drs. Kraman, Castle, and Renn. The administrative law judge rejected as unexplained the opinion of Dr. Kraman, that the miner had showed no evidence of pneumoconiosis. Drs. Castle and Renn had reviewed the evidence of record and attributed the miner's respiratory impairment to his smoking history. According to the Sixth Circuit, although the administrative law judge was again troubled by Dr. Hieronymus's incorrect smoking history, he believed that the consultative reports of Drs. Castle and Renn could "not overcome the advantage Dr. Hieronymus had in treating the Miner over the period from 1981 to 1989." *Stephens*, 298 F.3d at 517, 22 BLR at 2-503. Finding no mistake in fact in his prior decision, the administrative law judge denied employer's request for modification.

Employer appealed unsuccessfully to the Board and then to the Sixth Circuit. On appeal to the court, the employer in *Stephens* argued: "first, that the [administrative law judge] improperly gave 'automatic preference' to the treating physician's opinion, and second, that the [administrative law judge's] opinion is erroneously based on the treating physician's diagnosis which lacks both substantial evidence and an articulated rationale, and relies on incomplete or invalid data." *Stephens*, 298 F.3d at 513, 22 BLR at 2-496. The court rejected both contentions, finding first that the administrative law judge had reasonably considered all of the medical opinions of record. (It is noteworthy that, in the instant case, there are no opinions conflicting with that of Dr. Yajnik). Second, the court rejected employer's contention that Dr. Hieronymus's opinion lacks substantial evidence and an articulated rationale, and is, therefore not credible. The court explained:

In *Peabody Coal Co. v. Groves, supra*, we held that the [administrative law judge] as factfinder should decide whether a physician's report is "sufficiently reasoned," because such a determination is "essentially a credibility matter." 277 F.3d at 836 (quoting *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983)). The [administrative law judge] as factfinder found that Dr. Hieronymus's opinion was the most credible evidence in the record regarding the cause of Mr. Stephens' death.

Wolf Creek now asks us to find otherwise, arguing that there is insufficient evidentiary support for Dr. Hieronymus' [sic] opinion. As we observed in *Groves*, such a determination would require us to address Dr. Hieronymus' [sic] credibility, which would exceed our limited scope of review over the Board's decisions. 277 F.3d at 836. Accepting the [administrative law judge's] determination of Dr. Hieronymus' [sic] credibility, the doctor attributed Mr. Stephens' respiratory failure, which caused his death, secondary to pneumonia caused by coal workers' pneumoconiosis. We recognize that the evidence of record may permit an alternative conclusion, but we defer to the [administrative law judge's] authority in the finding of facts.

Stephens, 298 F.3d at 522-23, 22 BLR at 2-512-13.

Likewise, in the case at bar, employer is requesting the Board to second-guess the administrative law judge's decision to credit the opinion of Dr. Yajnik, who diagnosed COPD arising out of coal mine employment as a contributing cause of death. Like Dr. Hieronymus, Dr. Yajnik had treated the miner for COPD for many years prior to the miner's death; in addition, he referenced the documentation on which he based his opinion. Moreover, the severity of the miner's COPD was corroborated by his hospitalizations, reported in the credible testimony of his widow. Decision and Order at 6. It appears that there were no pulmonary function studies or blood gas studies in the record in support of Dr. Hieronymus's opinion. However, in the instant case, Dr. Yajnik relied upon such studies, the reports of which, over time, were lost. Even though the administrative law judge found a smoking history of thirty-three pack years, and Dr. Yajnik did not reference this history in his letter, *Stephens* shows that this omission does not preclude the administrative law judge from crediting Dr. Yajnik's opinion. Furthermore, like Dr. Hieronymus, Dr. Yajnik identified on the death certificate the miner's COPD as a contributing cause of death from pneumonia. The administrative law judge reasonably credited Dr. Yajnik's opinion of pneumoconiosis as a contributing cause of death where, as in *Stephens*, the miner died from pneumonia, and the physician who provided the opinion "held a long term relationship to the Miner as his treating physician, and had personal knowledge from which to address the Miner's cause of death." Decision and Order at 11; *See Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 816, 17 BLR 2-135, 2-141 (6th Cir. 1993)(holding that the opinion of the physician who had attended the miner for years prior to his death, and who had signed the death certificate identifying pneumoconiosis as a significant condition contributing to death, was entitled to greater weight than the opinion of the consulting physician who had examined only autopsy slides and who had been misinformed that the miner had recently undergone surgery).

In sum, the administrative law judge reasonably relied upon the opinion of Dr. Yajnik that the miner suffered from disabling COPD arising out of coal mine employment and that this condition contributed to his death from pneumonia. The doctor had treated the long-term miner for between ten and twenty years prior to his death. Furthermore, the doctor's opinion of the severity of the miner's condition was corroborated by evidence of hospitalizations for breathing problems. Moreover, no contrary evidence was offered to question the credibility or wisdom of the doctor's opinion.

The instant case is essentially identical to *Stephens*, in which the Sixth circuit affirmed an award of survivor's benefits based upon a similar opinion and death certificate signed by the miner's attending physician of many years. The Sixth Circuit rejected employer's argument in *Stephens* that the administrative law judge had erred in relying upon the doctor's opinion, that it was neither supported, nor explained. The court was adamant that the administrative law judge, as factfinder, alone determines the credibility of the evidence. *Stephens*, 298 F.3d at 522, 22 BLR at 2-513. The court has long insisted upon the limited scope of its review. *Groves*, 277 F.3d at 836, 22 BLR at 2-330. To reverse the administrative law judge's decision awarding benefits would exceed the Board's scope of its review. *Stephens*, 298 F.3d at 522, 22 BLR at 2-513; *Groves*, 277 F.3d at 836, 22 BLR at 2-330; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. Therefore, we hold that the administrative law judge acted within his discretion in according Dr. Yajnik's opinion probative weight.

We further reject employer's contention that the administrative law judge's crediting of Dr. Yajnik's report was precluded by the evidentiary limitations in the revised regulations, because the report referred to tests that are not of record. Employer's Brief at 8-9. Employer's reliance on *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47 (2004)(*en banc*) is misplaced. The Board held in *Dempsey* that the administrative law judge properly declined to consider a medical opinion which was inextricably tied to a chest x-ray which was inadmissible. *Dempsey*, 23 BLR at 1-67. Contrary to employer's argument, objective test results that are generated as part of the treatment of a miner, such as those referenced by Dr. Yajnik, are not subject to the evidentiary limitations: they are admissible evidence.⁸ 20 C.F.R. §725.414(a)(4); see *J.V.S. v. Arch of West Virginia/Apogee Coal Co.*, 24 BLR 1-78 (2008). Thus, as the administrative law judge properly considered all of the evidence of record, and acted within his discretion in according determinative weight to Dr. Yajnik's opinion, we affirm the administrative law

⁸ Dr. Yajnik specifically stated that the miner had "been under [his] care for treatment of multiple medical problems including COPD," and that his "investigations to determine the extent of his lung disease . . . included Pulmonary Function Tests, Arterial Blood Gas Analysis at rest and on room air and a Chest X-Ray." Director's Exhibit 14.

judge's findings that claimant established the existence of pneumoconiosis, in the form of COPD arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a), 718.203(b), and that pneumoconiosis was a substantially contributing cause of the miner's death, pursuant to 20 C.F.R. §718.205(c)(5). *See Stephens*, 298 F.3d at 522, 2 BLR at 2-513; *Mills*, 348 F.3d at 136, 23 BLR at 2-17; *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *Addison v. Director, OWCP*, 11 BLR 1-68, 1-70 (1988); Decision and Order at 10.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits and Decision and Order Denying Employer's Motion for Reconsideration are affirmed.

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

I concur:

BETTY JEAN HALL
Administrative Appeals Judge

SMITH, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's determination to affirm the administrative law judge's decision awarding benefits. The administrative law judge erred in finding that Dr. Yajnik's opinion is documented and reasoned. A documented opinion sets forth the clinical findings, observations, facts, and other data on which the physician based the diagnosis, and a reasoned opinion is one in which the administrative law judge finds the underlying documentation adequate to support the physician's conclusions. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987). Dr. Yajnik's letter is unaccompanied by the test results he referenced, nor are his treatment records in evidence. Review of the record does not disclose the documentation for the doctor's

diagnosis of legal pneumoconiosis.⁹ Although the determination of whether a physician's opinion is documented and reasoned is committed to the discretion of the administrative law judge, *see Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989), in this case, the documentation for the doctor's report is absent. Consequently, the administrative law judge was not in a position "to examine the validity of the reasoning of [Dr. Yajnik's] medical opinion in light of the studies conducted and the objective indications upon which the medical opinion . . . [was] based." *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). Therefore, substantial evidence does not support the administrative law judge's finding that Dr. Yajnik's opinion is documented and reasoned. Because Dr. Yajnik's opinion is undocumented, I would hold, as a matter of law, that Dr. Yajnik's opinion is insufficient to support claimant's burden of proof. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89, n.4; *Fields*, 10 BLR at 1-22; *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291, 1-1294 (1984). The record contains no other medical opinion evidence. Therefore, I would reverse the administrative law judge's findings that the miner suffered from legal pneumoconiosis, and that the miner's death was due to pneumoconiosis, pursuant to 20 C.F.R. §§718.202(a), 718.204(c), and I would reverse the award of benefits. *See Trumbo*, 17 BLR at 1-87-88.

ROY P. SMITH
Administrative Appeals Judge

⁹ Dr. Yajnik's letter was dated May 2, 1983. The record contains positive and negative interpretations of an April 27, 1983 x-ray by Drs. Kim and Wiot, respectively, Claimant's Exhibit 2; Director's Exhibit 35; and Dr. Wright's positive interpretation of an August 20, 1983 x-ray. Claimant's Exhibit 4. The administrative law judge found that the x-ray evidence did not establish pneumoconiosis. Decision and Order at 8. The record includes the results of pulmonary function studies administered on August 25, 1983, and August 12 or 15, 1983, and of an undated pulmonary function study. Claimant's Exhibits 3, 5. In addition, the record contains the results of a blood gas study administered on August 25, 1983. Claimant's Exhibit 5.