

BRB No. 10-0563 BLA

DELPHIA BEVERLY)	
(Widow of ARTHUR BEVERLY))	
)	
Claimant-Respondent)	
)	
v.)	
)	
SANDY FORK MINING COMPANY,)	DATE ISSUED: 06/28/2011
INCORPORATED)	
)	
and)	
)	
TRAVELERS INSURANCE 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 Awarding Benefits on Remand of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Lois A. Kitts (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits on Remand (2005-BLA-6202) of Administrative Law Judge Alice M. Craft, rendered on a survivor's claim¹ filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act).² This case is before the Board for a second time. In her prior Decision and Order, dated December 28, 2007, the administrative law judge found that the miner had twenty-five years of coal mine employment and adjudicated this survivor's claim pursuant to the regulations at 20 C.F.R. Part 718. The administrative law judge found that claimant established the existence of clinical and legal pneumoconiosis, and that the miner's death was due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits.

Upon consideration of employer's appeal, the Board affirmed, as unchallenged, the administrative law judge's findings that the miner worked twenty-five years in coal mine employment and that the computerized tomography (CT) scan and medical opinion evidence established that the miner had clinical pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.107, 718.202(a)(4), 718.203(b). *See D.B. [Beverly] v. Sandy Fork Mining Co.*, BRB No. 08-0319 BLA, slip op. at 3 (Nov. 26, 2008) (unpub.). The Board, however, held that the administrative law judge mischaracterized the opinion of Dr. Rosenberg, as supporting a finding of legal pneumoconiosis, and that she erred in giving controlling weight to the opinion of Dr. Moore, on the issues of the existence of legal pneumoconiosis and death causation, based on his status as the miner's treating physician, without addressing the factors set forth in 20 C.F.R. §718.104(d). Thus, the Board vacated the administrative law judge's findings at 20 C.F.R. §§718.202(a)(4) and 718.205(c), and remanded the case for further consideration. *Id.* at 8.

In her Decision and Order Awarding Benefits on Remand, dated May 24, 2010, the administrative law judge assigned greatest probative weight to Dr. Moore's opinion that the miner had chronic obstructive pulmonary disease (COPD) due, in part to coal dust exposure, over the contrary opinion of Dr. Rosenberg, that the miner's COPD was

¹ Claimant is the widow of the miner, Arthur Beverly, who died on May 15, 2004. Director's Exhibit 11. The miner was receiving benefits when he died, pursuant to an award of benefits for total disability due to pneumoconiosis issued in 2001. Director's Exhibit 1. Claimant filed a claim for survivor's benefits on July 6, 2004. Director's Exhibit 3.

² The recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, do not apply to the instant case, as the survivor's claim was filed before January 1, 2005. Director's Exhibit 2.

due entirely to smoking. Thus, the administrative law judge found that claimant established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge further credited Dr. Moore's opinion, that the miner's death was due to clinical and legal pneumoconiosis, pursuant to 20 C.F.R. §718.205(c). Thus, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that claimant established the existence of legal pneumoconiosis. Employer argues that the administrative law judge did not reconcile inconsistencies in Dr. Moore's opinion and that she exceeded the scope of her authority in rejecting Dr. Rosenberg's opinion. Employer also argues that the administrative law judge applied an incorrect legal standard in weighing the conflicting medical opinions as to the issue of whether the miner's death was hastened by pneumoconiosis at 20 C.F.R. §718.205(c). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response, unless specifically requested to do so by the Board. Employer has also filed a reply brief, reiterating its arguments.

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.³ 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).

In order to establish her entitlement to survivor's benefits, 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). In this survivor's claim, filed after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner's death, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that death was caused by complications of pneumoconiosis or if the presumption relating to complicated pneumoconiosis, set forth in 20 C.F.R. §718.304, is applicable. See 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. See 20 C.F.R. §718.205(c)(5); *Griffith v. Director*,

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner's coal mine employment was in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*); Director's Exhibit 4.

OWCP, 49 F.3d 184, 186, 19 BLR 2-111, 2-116 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993).

I. Legal Pneumoconiosis

On remand, the administrative law judge reconsidered Dr. Moore's opinion, as instructed by the Board, in light of the factors set forth at 20 C.F.R. §718.104(d)⁴ and *Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-647 (6th Cir. 2003). The administrative law judge found that Dr. Moore treated the miner on "more than [forty] occasions" from 1993 to 2004, and "consistently diagnosed the [m]iner with COPD and pneumoconiosis" during that period. Decision and Order on Remand at 8; Director's Exhibit 13; Claimant's Exhibit 1; Employer's Exhibit 6. On a medical form dated August 24, 2004, Dr. Moore check-marked boxes indicating that the miner had both clinical and legal pneumoconiosis, and that his death was hastened by pneumoconiosis. Director's Exhibit 14. In a deposition conducted on May 4, 2007, Dr. Moore stated that the miner's primary treatment was for chronic lung disease, and that he always exhibited "some form of expiratory wheezing or rhonchi." Claimant's Exhibit 1 at 6. He testified that CT scans confirmed that the miner had both coal workers' pneumoconiosis and COPD, in the form of bullous emphysema, and scarring of the lungs from healed tuberculosis. *Id.* at 7-8, 14-15. Dr. Moore attributed the miner's emphysema primarily to smoking but also to coal dust exposure. *Id.* at 10. According to Dr. Moore, the miner quit smoking in 1978, prior to the miner becoming his patient. *Id.* at 10. When asked whether he could quantify how much of the miner's respiratory failure, leading to his death, was attributable to pneumoconiosis versus emphysema, Dr. Moore stated, "at least seventy-thirty (70-30), eighty-twenty (80-20) pneumoconiosis versus tobacco." *Id.* at 10. On cross-examination, Dr. Moore stated that he based his diagnosis of clinical pneumoconiosis on the miner's chest x-ray and history of coal dust exposure, ending in 1988. *Id.* at 12. Dr. Moore also agreed with employer's counsel that "over ninety

⁴ The regulation at 20 C.F.R. §718.104(d) provides that, "the adjudication officer must give consideration to the relationship between the miner and any treating physician whose report is admitted into the record." 20 C.F.R. §718.104(d)(1)-(4). Specifically, the adjudication officer shall take into consideration the following factors in weighing the opinion of the miner's treating physician: (1) nature of relationship; (2) duration of relationship; (3) frequency of treatment; and (4) extent of treatment. *Id.* The applicable regulation additionally provides that "the weight given to the opinion of a miner's treating physician shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5); *see also Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-647 (6th Cir. 2003).

percent (90%) of all cases of COPD are the direct cause, or are directly related to cigarette smoking.” *Id.* at 15.

With regard to Dr. Rosenberg, the administrative law judge noted that he prepared a report dated March 6, 2007, based on his review of the medical record. Dr. Rosenberg opined that the miner had x-ray findings consistent with his history of tuberculosis. Employer’s Exhibit 1. Based on the pulmonary function testing, which showed a severe reduction in the FEV1 and FEV%, Dr. Rosenberg opined that the miner had a disabling obstructive respiratory impairment, which he attributed to smoking. Citing certain medical studies (Attfield, Morgan, Soutar and Hurley), Dr. Rosenberg explained that the miner’s pattern of impairment (a reduction in the FEV%) was not consistent with impairment from coal dust exposure:

It has been determined that while the FEV1 decreases, the FEV1/FVC ratio (FEV1%) is generally preserved. In contrast to coal mine dust, the FEV1% is decreased in the presence of smoking-related airflow obstruction.

Id. Dr. Rosenberg further noted that when coal mine dust causes emphysema, it causes focal emphysema, and not bullous emphysema, as demonstrated by the CT scan evidence in this case. *Id.* In a report dated May 8, 2007, Dr. Rosenberg revised his opinion to include a diagnosis of “minimal” clinical pneumoconiosis, but reiterated that the miner’s COPD was due to smoking alone. Employer’s Exhibit 2. Dr. Rosenberg was subsequently deposed on May 16, 2007, and reiterated that the miner did not have legal pneumoconiosis. Employer’s Exhibit 3. In explaining the bases for his causation opinion, Dr. Rosenberg specifically testified that the miner’s minimal x-ray findings for clinical pneumoconiosis did not correlate with his severe degree of obstruction. *Id.* at 15. He further noted that the miner’s type of emphysema was not consistent with simple pneumoconiosis, as bullous emphysema does not occur with exposure to coal dust “except under certain circumstances where somebody has progressive massive fibrosis.” *Id.* at 23.

In weighing the evidence at 20 C.F.R. §718.202(a)(4), the administrative law judge found that Dr. Moore’s opinion was documented and reasoned. Decision and Order on Remand at 15. The administrative law judge was also persuaded by Dr. Moore’s opinion, based on his “lengthy experience” treating the miner. *Id.* In contrast, the administrative law judge found that Dr. Rosenberg’s opinion was entitled to less weight because he expressed views that were inconsistent with the premises underlying the regulations. *Id.* Accordingly, the administrative law judge found, based on Dr. Moore’s opinion, that claimant met her burden to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Employer contends on appeal that the administrative law judge erred in finding that claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Employer specifically argues that the administrative law judge erred in failing to address inconsistencies in Dr. Moore’s opinion, regarding the percentage to which coal dust exposure versus smoking contributed to the miner’s respiratory condition:

[Dr. Moore] testified that cigarette smoking was the primary etiology of the pulmonary impairment, but that coal dust exposure also contributed. He then stated, without explanation, that pneumoconiosis accounted for [seventy percent] of the respiratory failure. The view that cigarette smoking was the primary etiology of the pulmonary impairment inherently excludes the possibility that pneumoconiosis accounted for [seventy percent] of the pulmonary impairment.

Employer’s Brief in Support of Petition for Review at 4-5. Employer’s argument is rejected as without merit.⁵

As noted by the administrative law judge, Dr. Moore was not required to “quantify with specificity” the percentage of the miner’s impairment that was due to smoking versus coal dust exposure. Decision and Order on Remand at 14; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000). Because Dr. Moore attributed the miner’s respiratory condition to a combination of smoking and coal dust exposure, the administrative law judge properly found that it was sufficient to support claimant’s burden of proving the existence of legal pneumoconiosis. *See Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-19-20 (2003); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*).

Furthermore, contrary to employer’s assertion, the administrative law judge followed the Board’s instruction that she specifically address Dr. Moore’s testimony regarding the etiology of the miner’s emphysema. *See Beverly*, BRB No. 08-0319 BLA, slip op. at 5; Employer’s Brief in Support of Petition for Review at 11. The administrative law judge stated:

⁵ Employer misstates Dr. Moore’s testimony. Although Dr. Moore stated that smoking was the major cause of the miner’s emphysema when discussing the issue of legal pneumoconiosis, he also testified that “pneumoconiosis,” encompassing both clinical and legal pneumoconiosis, accounted for seventy percent of the miner’s death due to respiratory failure. *Id.*

In his deposition, Dr. Moore testified that the [m]iner's emphysema was due to *both* cigarette smoking and coal dust exposure, but that cigarettes were the primary cause. On cross-examination, he agreed that [bullous] emphysema, the type demonstrated by the CT scan and x-rays [in this case], is the type of emphysema associated with cigarette smoking. The Board stated that I did not "discuss this apparent inconsistency in Dr. Moore's opinion." Board's Decision and Order at 5. I do not find this to be an inconsistency. When he agreed that [bullous] emphysema is the type of emphysema associated with smoking, he was answering the question he was asked. He was not asked whether bullous emphysema is a type of emphysema associated with coal dust exposure. His answer that bullous emphysema is the type of emphysema associated with smoking [does] not establish that he believed that smoking was the sole cause of the [m]iner's emphysema. He diagnosed COPD repeatedly over the years, basing this diagnosis on objective testing and physical examinations. He specifically opined that the [m]iner's COPD, in the form of emphysema, was caused by *both* smoking and coal dust exposure.

Decision and Order on Remand at 13-14 (emphasis in original). Because the administrative law judge has discretion to assess the credibility of a medical opinion, we affirm the administrative law judge's finding that Dr. Moore's opinion was reasoned and documented as to the existence of legal pneumoconiosis.⁶ 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); Decision and Order on Remand at 13.

Employer also contends that the administrative law judge erred in rejecting Dr. Rosenberg's opinion.⁷ We disagree. Contrary to employer's assertion, the administrative

⁶ The administrative law judge found that Dr. Moore's opinion "was supported by the objective evidence, including CT scans, x-rays, pulmonary function studies, the [m]iner's symptomatology, and findings on numerous physical examinations." Decision and Order on Remand at 13. In addition, the administrative law judge noted that Dr. Moore "had a sufficient understanding of the miner's smoking history" and "reported that the [m]iner had [thirty] years of coal dust exposure[,] similar to my finding." *Id.*

⁷ Employer asserts that "there is no medical opinion evidence in this record that explains just how it is that Dr. Rosenberg's scientific opinions are inconsistent with the [National Institute of Occupational Safety and Health (NIOSH)] findings . . . and that [the administrative law judge] exceeded the scope of her authority by discrediting Dr.

law judge had the authority to *personally* evaluate, as part of her deliberative process, whether the medical rationale provided by Dr. Rosenberg, for excluding coal dust exposure as a causative factor for the miner's disabling respiratory condition, was consistent with the conclusions contained in the medical literature and scientific studies relied upon by the Department of Labor (DOL) in promulgating regulations pertaining to the definition of legal pneumoconiosis pursuant to 20 C.F.R. §§718.201(a)(2), 718.202(a)(4). *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007). The administrative law judge correctly observed that Dr. Rosenberg excluded coal dust exposure as a causative factor for the miner's emphysema because the pulmonary function studies showed a reduction in the FEV1% (FEV1/FVC), which he considered to be a pattern "classic for the presence of smoking related COPD and not airflow obstruction related to past coal dust exposure." Employer's Exhibit 2. As noted by the administrative law judge, however, the DOL has reached a different conclusion from Dr. Rosenberg, based on findings by the National Institute for Occupational Safety and Health (NIOSH), as to whether a reduced FEV1/FVC is consistent with impairment related to coal dust exposure. The administrative law judge correctly cited to the preamble, noting that NIOSH has found that "COPD may be detected from decrements in certain measures of lung function, especially FEV1 and the ratio of FEV1/FVC [FEV1%]." Decision and Order on Remand at 14, *citing* 65 Fed. Reg. 79943 (Dec. 20, 2000); *see Barrett*, 478 F.3d at 350, 23 BLR at 2-472; *Stephens*, 298 F.3d at 511, 22 BLR at 2-494; *Groves*, 277 F.3d at 836, 22 BLR at 2-320; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

The administrative law judge also correctly noted that Dr. Rosenberg causally related the miner's bullous emphysema to smoking because he believes that coal workers' pneumoconiosis only causes focal emphysema. Decision and Order on Remand at 14. The administrative law judge rationally found, under the facts of this case, that Dr. Rosenberg's opinion, that bullous emphysema is never caused by simple coal workers' pneumoconiosis, is not rationally explained, given that "the [DOL] has concluded that the medical literature 'supports the theory that dust-induced emphysema and smoke-induced emphysema occur through similar mechanisms.'" *Id.* at 15, *quoting* 65 Fed. Reg. 79943 (Dec. 20, 2000); *see also Barrett*, 478 F.3d at 350, 23 BLR at 2-472; *Stephens*, 298 F.3d at 511, 22 BLR at 2-494; *Groves*, 277 F.3d at 836, 22 BLR at 2-320; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. We therefore affirm, as supported by substantial evidence, the administrative law judge's decision to accord Dr. Rosenberg's opinion less weight at 20 C.F.R. §718.202(a)(4). *See Cornett*, 227 F.3d at 576-77, 22 BLR at 2-121-22; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

Rosenberg's expert medical opinion by substituting her lay opinion of what the NIOSH studies mean." Employer's Brief in Support of Petition for Review at 13.

Because determining the credibility of the medical experts is committed to the discretion of the administrative law judge, we affirm her finding that Dr. Moore's opinion is "the most probative and persuasive opinion of record" and outweighs Dr. Rosenberg's contrary opinion, on the issue of whether the miner had COPD due, in part, to coal dust exposure. Decision and Order on Remand at 15; *see Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Groves*, 277 F.3d at 836, 22 BLR at 2-320; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Clark*, 12 BLR at 1-151. Thus, we affirm the administrative law judge's finding that claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

II. Death Causation

Pursuant to 20 C.F.R. §718.205(c), the administrative law judge again considered the conflicting opinions of Drs. Moore and Rosenberg. Dr. Moore opined that the miner died due to respiratory failure caused by his clinical pneumoconiosis and by his smoking and coal dust related COPD/emphysema, while Dr. Rosenberg opined that the miner died from respiratory failure caused by "an acute exacerbation of his underlying airways disease, which represented a combination of underlying smoking related COPD, asthma or asthmatic bronchitis . . . and airways disease related to his past tuberculosis." Employer's Exhibit 3 at 25. The administrative law judge rejected Dr. Rosenberg's death causation opinion because he did not diagnose legal pneumoconiosis and further found that Dr. Moore's opinion outweighed Dr. Rosenberg's opinion. Decision and Order on Remand at 17. The administrative law judge further concluded that Dr. Moore's opinion was supported by the objective evidence and bolstered by his treatment of the miner "on numerous occasions over a ten-year period" *Id.*

Employer contends on appeal that Dr. Moore's opinion fails to satisfy claimant's burden of proof at 20 C.F.R. §718.205(c), because Dr. Moore did not specifically explain how pneumoconiosis "hastened the miner's death through a specifically defined process that reduc[ed] the miner's life by an estimable time." Employer's Brief in Support of Petition for Review at 14, *citing Williams*, 338 F.3d at 501, 22 BLR at 2-625. Employer's argument is without merit.

In this case, the death certificate listed COPD as the underlying cause of death, and both Dr. Moore and Dr. Rosenberg were in agreement that the miner's death was caused by respiratory failure related to his obstructive lung disease. Director's Exhibit 11; Claimant's Exhibit 1; Employer's Exhibit 3. The physicians, however, disagreed as to the etiology of that condition. Dr. Moore opined that the miner had clinical pneumoconiosis and COPD due to both smoking and coal dust exposure, and that all of these conditions contributed to his respiratory failure. Claimant's Exhibit 1. Dr. Rosenberg opined that the miner's minimal clinical pneumoconiosis played no role in his

death, and that the miner's death was related to smoking-induced COPD and exacerbation of asthma. Employer's Exhibit 3.

The administrative law judge resolved the conflict in the medical opinion evidence, regarding the cause of the miner's COPD, by crediting Dr. Moore's opinion at 20 C.F.R. §718.202(a)(4), and we have affirmed that finding *supra*, slip op. at 9. Decision and Order on Remand at 6. In addressing the issue of death causation, we conclude that the administrative law judge also permissibly credited Dr. Moore's opinion, that the miner's death was due to clinical and legal pneumoconiosis, because she considered it to be reasoned and documented, supported by substantial evidence in the record, and credible, in light of Dr. Moore's lengthy treatment of the miner. *See Williams*, 338 F.3d at 518, 22 BLR at 2-655; *Cornett*, 227 F.3d at 576-77, 22 BLR at 2-121-22; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-151; Decision and Order on Remand at 13-15; 17-18.

Additionally, the administrative law judge rationally found that there are "no specific and persuasive reasons for concluding that Dr. Rosenberg's opinion, that pneumoconiosis did not contribute to the [m]iner's pulmonary impairment and death[,] did not rest upon his disagreement with my finding that the [m]iner had legal pneumoconiosis." Decision and Order on Remand at 18; *see Stephens*, 298 F.3d at 511, 22 BLR at 2-494; *Toler v. Eastern Associated Coal Co.*, 43 F.2d 109, 19 BLR 2-70 (4th Cir. 1995). Thus, we affirm the administrative law judge's finding, based on Dr. Moore's opinion, that claimant satisfied her burden to establish that the miner's death was hastened by pneumoconiosis pursuant to 20 C.F.R. §718.205(c). We therefore affirm the award of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge