

BRB No. 02-0521 BLA

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| JUANITA BENTLEY |) | |
| (Widow of BOONE BENTLEY) |) | |
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| Claimant-Respondent |) | |
| |) | |
| v. |) | DATE ISSUED: |
| |) | |
| INCOAL INCORPORATED |) | |
| |) | |
| 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 Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Stephen A. Sanders (Appalachian Citizens Law Center, Inc.),
Prestonburg, Kentucky, for claimant.

Tab R. Turano, Laura Metcoff Klaus (Greenberg Traurig LLP),
Washington, D.C., for employer.

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

McGRANERY, Administrative Appeals Judge:

Employer appeals the Decision and Order--Awarding Benefits (2001-BLA-0804) of Administrative Law Judge Joseph E. Kane 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 Claimant filed her application for survivor's benefits on April 19, 2000.

Director's Exhibit 1. The District Director of the Office of Worker's Compensation Programs denied benefits and claimant requested a hearing, which was held on October 24, 2001. Director's Exhibits 25, 26.

In the Decision and Order--Awarding Benefits, the administrative law judge credited the miner with fifteen years of coal mine employment. Based upon the medical evidence of record, the administrative law judge found that the miner suffered from pneumoconiosis arising out of coal mine employment which was a substantially contributing cause or factor leading to the miner's death pursuant to 20 C.F.R. §§718.202(a)(2),(a)(4), 718.203(b), 718.205(c)(2). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in his weighing of the medical evidence pursuant to Sections 718.202(a)(2), (a)(4) and 718.205(c)(2). Claimant responds, urging affirmance of the award of benefits, and the Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.

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

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2), (4). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it hastens the miner's death in any way. *Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-116 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993); see 20 C.F.R. §718.205(c)(5).

Review of the record reflects that the physicians were asked to assume that the miner had fifteen years of underground coal mine employment ending in 1981, and had smoked two packs of cigarettes per day starting at age sixteen and ending in 1979, a total duration of approximately 39 or 40 years. The record indicates

further that the miner was hospitalized several times in the last nine years of his life with respiratory problems. Director's Exhibits 13, 14, 21. He died on February 11, 2000 while hospitalized with chronic obstructive pulmonary disease (COPD), pneumonia, and respiratory failure. Director's Exhibit 21. The miner's lungs were removed and autopsied. *Id.*

The administrative law judge considered chest x-ray evidence, autopsy evidence, hospital records, and the reports and testimony of several physicians regarding the existence of pneumoconiosis.³ The administrative law judge found that although the x-rays did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), the autopsy and medical opinion evidence did establish the existence of pneumoconiosis under Sections 718.202(a)(2) and (a)(4).

The autopsy and medical opinion evidence considered by the administrative law judge was as follows: The autopsy report by Dr. Davis diagnosed bronchopneumonia, emphysema, "interstitial fibrosis and anthracosis," and anthracotic lymph nodes. Director's Exhibit 24 at 1. Dr. Davis described a "small amount of anthracotic pigment . . . throughout the lung," and concluded that "[t]here are no discernible coal dust macules nor is a suggestion of a pattern of fibrosis consistent with black lung disease." *Id.* at 2. Dr. Davis also remarked that the "lymph nodes demonstrate marked anthracosis and hyalinized granulomata." *Id.* Dr. Tazelaar of the Mayo Clinic reviewed the autopsy tissue slides. Director's Exhibit 24. Dr. Tazelaar noted pneumonia and emphysema, and observed that the "[l]ymph nodes show anthracosis and multiple hyalinized granulomata." *Id.*

Dr. Caffrey reviewed the autopsy report and slides and the miner's medical records. Employer's Exhibits 3, 7. Dr. Caffrey described pneumonia, emphysema, bronchitis, and a "moderate amount of anthracotic pigment and hyalinized granulomata" in the hilar lymph nodes. Employer's Exhibit 3 at 4-5. Within the lung tissue, Dr. Caffrey noted mild anthracotic pigment. *Id.* Dr. Caffrey concluded that coal workers' pneumoconiosis was absent because there was no reticulin or focal emphysema. *Id.* at 6. At his deposition, Dr. Caffrey explained these diagnoses and added that the miner had COPD due solely to smoking. Employer's Exhibit 7 at 10. Dr. Caffrey testified that he specializes in pathology. Employer's Exhibit 7 at 3.

Dr. Green reviewed the autopsy report and slides and the miner's medical records. Claimant's Exhibit 1, Employer's Exhibit 8. Dr. Green diagnosed pneumonia, emphysema, and "mild simple macular pneumoconiosis, characterized by coal dust macules in the walls of respiratory bronchioles, with associated focal emphysema." Claimant's Exhibit 1 at 3. Dr. Green additionally noted that "[s]ome of the small airways show features more characteristic of mineral dust small airways disease, and polarizing microscopy shows numerous particles with morphologies characteristic of both silica and silicates in their walls." *Id.* Dr. Green also diagnosed COPD due to both smoking and coal mine dust exposure. Claimant's

Exhibit 1 at 5. At his deposition, Dr. Green was asked to explain how he diagnosed pneumoconiosis when Drs. Davis, Tazelaar, and Caffrey did not. Dr. Green noted that his diagnosis of “mild” macular pneumoconiosis left room for disagreement. Employer's Exhibit 8 at 7. Dr. Green further explained that one of the forms of pneumoconiosis he diagnosed was mineral dust small airways disease, “a subtle lesion that I think a lot of pathologists are not . . . very familiar with,” and which is easily missed by other pathologists unless they use polarized light to search for silica and silicates in the walls of the small airways. Employer's Exhibit 8 at 7, 20. Dr. Green additionally explained that the miner's COPD was primarily related to smoking, but that coal mine dust exposure was still a significant contributing factor to the COPD. Employer's Exhibit 8 at 10-11. Dr. Green is Board-certified in Anatomic Pathology. Claimant's Exhibit 2; Employer's Exhibit 8 at 3.

Dr. Branscomb reviewed the autopsy report and the miner's medical records. Employer's Exhibits 2, 5. Dr. Branscomb concluded that the miner had neither clinical nor legal pneumoconiosis. Employer's Exhibit 2. In both his report and deposition Dr. Branscomb explained that the miner's respiratory symptoms and COPD were not typical of those related to coal workers' pneumoconiosis or coal mine dust exposure, but were typical of the type of COPD related to smoking. Employer's Exhibit 2 at 8-9; Employer's Exhibit 5 at 10-11. Regarding Dr. Davis's autopsy findings of anthracosis, Dr. Branscomb testified that anthracosis is not a disease of the lung but is merely a condition of the lung, in the same way that tanning is a condition of the skin. Employer's Exhibit 5 at 16. Dr. Branscomb is Board-certified in Internal Medicine. Employer's Exhibit 2.

Dr. Fino reviewed the autopsy report and the miner's medical records. Employer's Exhibits 4, 6. Dr. Fino diagnosed obstructive lung disease due to smoking and concluded that the miner did not have pneumoconiosis. Employer's Exhibit 4. At his deposition, Dr. Fino indicated that his opinion was changed by a review of Dr. Green's report diagnosing pneumoconiosis, in that he was now “in a quandary” over whether the miner had pneumoconiosis. Employer's Exhibit 6 at 6. Dr. Fino explained that “Dr. Green has very much experience in the pathologic assessment of coal workers' pneumoconiosis,” and Dr. Tazelaar is associated with the Mayo Clinic, “known for their pulmonary pathology. . . .” *Id.* Dr. Fino stated, “So I've got two excellent pathologists coming to . . . two different diagnoses,” and therefore “I can't really comment. . . .” *Id.* He added that whether or not pneumoconiosis was present did not affect his conclusion that the miner's death was unrelated to pneumoconiosis. *Id.* at 7. Dr. Fino testified that the miner's obstructive lung disease was due to smoking. *Id.* at 12. Dr. Fino is Board-certified in Internal Medicine and Pulmonary Disease. Employer's Exhibit 4.

The administrative law judge also considered the miner's hospital records. Director's Exhibits 13, 14, 21. These treatment records reflect nine hospitalizations between 1991 and 2000, seven of which were for respiratory distress associated

with pneumonia and exacerbations of COPD. A pulmonary function study, blood gas studies, and chest x-rays were conducted. Dr. Sundaram was the treating physician. At several points in the hospital records Dr. Sundaram listed COPD and coal workers' pneumoconiosis, at times in the history section, other times as discharge diagnoses. On four occasions Dr. Sundaram reviewed the miner's chest x-ray and stated it was "consistent with" COPD and coal workers' pneumoconiosis. Director's Exhibits 13, 21.

Finally, the administrative law judge considered Dr. Sundaram's deposition. Claimant's Exhibit 3. Dr. Sundaram testified that he treated the miner from July 1991 until the miner's death on February 11, 2000, seeing him every four to six weeks and attending him in the hospital. Claimant's Exhibit 3 at 5, 9. Based on the miner's coal mine employment and smoking histories, pulmonary function and blood gas studies, and autopsy findings of fibrosis and anthracosis, Dr. Sundaram concluded that the miner had coal workers' pneumoconiosis and that his COPD was due in part to coal mine dust exposure. Claimant's Exhibit 3 at 16, 21, 25. Even assuming a smoking history of two packs per day, Dr. Sundaram attributed the miner's COPD in part to coal dust, explaining that the miner's health should have improved after he quit smoking in 1979, yet deteriorated instead. Claimant's Exhibit 3 at 26. Dr. Sundaram testified that he is Board-certified in Internal Medicine, completed a two-year pulmonary residency, and devotes 50% of his practice to treating patients with respiratory disease. Claimant's Exhibit 3 at 3.

In finding the existence of pneumoconiosis established by the autopsy evidence pursuant to Section 718.202(a)(2), the administrative law judge gave "the most weight" to Dr. Green's opinion. Decision and Order at 14. He found that Dr. Green "carefully explained" his diagnosis and additionally explained "how the subtle details of the disease can be missed on examination." Decision and Order at 14. The administrative law judge added that, "although they did not diagnose pneumoconiosis, Dr. Davis found anthracosis and Dr. Caffrey found anthracotic pigment. . . ." *Id.* Citing published black lung cases, the administrative law judge observed that "anthracosis ha[s] been held to be the equivalent of a diagnosis of pneumoconiosis," and noted that "opinions indicating the presence of anthracotic pigment must also be considered." *Id.* The administrative law judge concluded: "I find that Dr. Green's report outweighs the reports of the other pathologists." *Id.*

Employer contends that the administrative law judge did not provide a rational basis for crediting Dr. Green's opinion. Employer's Brief at 17. Contrary to employer's contention, the administrative law judge identified Dr. Green's careful explanation of his diagnoses as one reason for giving the most weight to Dr. Green's opinion. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*)(It is within the fact-finder's discretion to assess the quality of explanation). Additionally, the administrative law judge indicated that he was persuaded by Dr. Green's testimony that one form of pneumoconiosis that he detected, mineral dust

small airways disease, is a “subtle lesion” easily missed by other pathologists unless they use polarized light to search for silica and silicates in the walls of the small airways, as Dr. Green did. Employer's Exhibit 8 at 7, 20. In essence, the administrative law judge found that Dr. Green examined the autopsy lung tissue slides more thoroughly than did the other pathologists.⁴ It was proper for the administrative law judge to rely on the thoroughness of Dr. Green's evaluation as a basis for crediting his opinion. See *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993)(administrative law judges must consider the quality of the evidence); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-32 (4th Cir. 1997)(administrative law judges should consider “the detail of [a physician's] analysis.”) Therefore, we reject employer's contention and hold that the administrative law judge permissibly weighed Dr. Green's opinion.

Employer argues that the administrative law judge mischaracterized the findings of Drs. Davis and Caffrey as the equivalent of diagnoses of pneumoconiosis. Employer's Brief at 14. Review of the administrative law judge's Decision and Order reflects that he found that Drs. Davis and Caffrey did not diagnose pneumoconiosis; the administrative law judge discussed Dr. Davis's and Dr. Caffrey's findings and explained his reasons for crediting Dr. Green's opinion. Decision and Order 14. Regarding Dr. Davis's description of “anthracosis,” the administrative law judge did not err in noting that the Board and circuit courts have accepted that a diagnosis of anthracosis supports a finding of pneumoconiosis. See *Hapney v. Peabody Coal Co.*, 22 BLR 1-104, 1-114-15 (2001)(*en banc*)(Dolder and Smith, JJ, dissenting in part and concurring in part); Decision and Order at 14 citing *Dagnan v. Black Diamond Coal Mining Co.*, 994 F.2d 1536, 18 BLR 2-203 (11th Cir. 1993); *Bueno v. Director, OWCP*, 7 BLR 1-337 (1984). As for Dr. Caffrey's description of anthracotic pigment, the administrative law judge did not find it to be the equivalent of pneumoconiosis. He simply noted that anthracotic pigment was a finding that “must also be considered.” Decision and Order at 14 citing *Lykins v. Director, OWCP*, 819 F.2d 146, 10 BLR 2-129 (6th Cir. 1987)(remanding for administrative law judge to consider biopsy finding of anthracotic pigment). Because the administrative law judge did not find the anthracotic pigment to be pneumoconiosis, he did not violate the provision that a finding of anthracotic pigment is insufficient “by itself, to establish the existence of pneumoconiosis.” 20 C.F.R. §718.202(a)(2).

Although the administrative law judge's analysis might have been better articulated, he essentially found that Dr. Davis's and Dr. Caffrey's descriptions of anthracosis and anthracotic pigmentation had to be taken into account, and either lent support to Dr. Green's diagnosis of pneumoconiosis, or at least did not undercut it. This reading is borne out by the fact that the administrative law judge found the existence of pneumoconiosis established at subsection (a)(2) based on Dr. Green's report alone. Decision and Order at 14 (“I find that Dr. Green's report outweighs the

reports of the other pathologists.”) Therefore, we hold that the administrative law judge did not err in his analysis of Dr. Davis’s and Dr. Caffrey’s opinions.

Employer next contends that remand is required because the administrative law judge “completely ignored” Dr. Tazelaar’s autopsy slide review report. Employer’s Brief at 16. Because the administrative law judge clearly set forth the findings contained in Dr. Tazelaar’s two-sentence report, we construe employer’s argument to be that the administrative law judge erred in omitting mention of Dr. Tazelaar’s finding of lymph node anthracosis when he discussed Dr. Davis’s description of anthracosis and Dr. Caffrey’s description of anthracotic pigment. Decision and Order at 10, discussing Director’s Exhibit 24 (fax report from the Mayo Clinic). However, considering the administrative law judge’s analysis of Dr. Davis’s description of “anthracosis,” it is difficult to see how he would not have drawn the same conclusion about Dr. Tazelaar’s finding of anthracosis, or what remanding this case for the administrative law judge to explicitly discuss Dr. Tazelaar’s brief report would accomplish. Even assuming *arguendo* that Dr. Tazelaar’s finding of lymph node anthracosis directly contradicts Dr. Green’s diagnosis of pneumoconiosis, the administrative law judge found that Dr. Green’s report “outweigh[ed] the reports of the other pathologists,” Decision and Order at 14, in part because of Dr. Green’s careful explanation of his diagnoses and because of his explanation that the other pathologists may have missed subtle signs of disease present in the lung tissue. See *Clark, supra*; *Woodward, supra*. Therefore, we reject employer’s contention that the administrative law judge’s failure to again mention Dr. Tazelaar’s description of anthracosis at page fourteen of the Decision and Order requires a remand. Based on all the foregoing, we affirm the administrative law judge’s finding pursuant to Section 718.202(a)(2) as supported by substantial evidence and in accordance with law.

In finding the existence of pneumoconiosis established by the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge gave “more weight” to Dr. Sundaram’s opinion as the miner’s treating physician “because the record evidences the fact that the physician was more familiar with the miner’s condition.” Decision and Order at 15. The administrative law judge considered that Dr. Sundaram “practices in the area of lung disease,” and treated the miner regularly “over a span of several years” for breathing problems. *Id.* The administrative law judge found that although Dr. Sundaram’s treatment notes in the record were “not thorough reports,” Dr. Sundaram adequately explained his diagnosis of pneumoconiosis in his deposition testimony. *Id.* The administrative law judge also gave “greater weight” to Dr. Green’s diagnosis of pneumoconiosis, finding Dr. Green’s opinion “well-documented and well-reasoned.” *Id.* Additionally, the administrative law judge attached significance to the fact that Dr. Fino regarded Dr. Green as an experienced pathologist whose diagnosis placed Dr. Fino in a quandary as to the presence of pneumoconiosis. The administrative law judge

concluded that together, the opinions of Drs. Sundaram and Green outweighed the other physicians' opinions. Decision and Order 16.

Employer argues that the administrative law judge erred in giving more weight to Dr. Sundaram's opinion because of his status as the miner's treating physician. Employer's Brief at 19-22. The opinion of a treating physician "should be 'given [its] proper deference,'" *Wolf Creek Collieries v. Director, OWCP* [Stephens], 298 F.3d 511, 521, --- BLR --- (6th Cir. 2002), quoting *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1042, 17 BLR 2-16, 2-24 (6th Cir. 1993), but the opinion must be "properly credited and weighed." *Peabody Coal Co. v. Groves*, 277 F.3d 829, 834, 22 BLR 2-320, 2-326 (6th Cir. 2002)(also quoting *Tussey*.)

Upon review, we conclude that the administrative law judge properly credited and weighed Dr. Sundaram's diagnosis of pneumoconiosis. Rather than crediting Dr. Sundaram's opinion simply because he treated the miner, the administrative law judge considered whether his opinion was documented and reasoned. The administrative law judge specifically found that although Dr. Sundaram's treatment notes were not thoroughly documented and reasoned reports, Dr. Sundaram adequately explained at his deposition how he based his diagnosis "not only on x-ray evidence . . . but also on work history, physical findings, breathing tests, oxygen levels[,] and visits over several years." Decision and Order at 15. The administrative law judge further found that although Dr. Sundaram may have begun with an inaccurate smoking history, he later considered an accurate smoking history and explained that his conclusions remained the same. *Id.* Substantial evidence in the record supports these findings. Employer argues that Dr. Sundaram's opinion is undocumented and unreasoned, but the determination of whether a report is documented and reasoned is a credibility matter for the administrative law judge. See *Groves, supra*; *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir.1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993). The administrative law judge further considered that Dr. Sundaram regularly treated the miner for pulmonary problems over several years, and found that the record demonstrated that Dr. Sundaram was more familiar with the miner's condition. These findings are supported by substantial evidence and are in accordance with law. See *Groves, supra*; 20 C.F.R. §718.104(d). Additionally, the administrative law judge considered Dr. Sundaram's credentials and that Dr. Sundaram practices in the area of respiratory medicine. Decision and Order at 9, 15. Finally, the administrative law judge relied not only on Dr. Sundaram's opinion, but also Dr. Green's, and reasonably determined that together they outweighed the opinions of the other physicians. Decision and Order at 16. In sum, review of the administrative law judge's Decision and Order reflects that he did not mechanically credit Dr. Sundaram's opinion, but "examined all of the opinions and made reasoned judgments as to their credibility." *Stephens*, 298 F.3d at 422, --- BLR at ---. Therefore, we reject employer's contention that the administrative law judge erred in

according more weight to Dr. Sundaram's diagnosis of pneumoconiosis.

Employer contends that the administrative law judge erred by considering Dr. Green's opinion a documented and reasoned opinion at Section 718.202(a)(4). Employer's Brief at 23. Employer asserts that Dr. Green's diagnosis of pneumoconiosis is based solely on autopsy evidence and therefore cannot be considered at Section 718.202(a)(4). This argument lacks merit. Section 718.202(a)(4) provides that a physician exercising sound medical judgment can find that the miner suffers from pneumoconiosis "as defined in §718.201." 20 C.F.R. §718.202(a)(4). Such an opinion must be based on objective medical evidence. *Id.* The administrative law judge noted that Dr. Green reviewed both the autopsy tissue slides and the miner's medical records. Decision and Order at 15. Dr. Green set forth these items in his report, including coal mine employment and smoking histories, x-ray readings, and blood gas study results. Claimant's Exhibit 1 at 1-3. In his report and deposition, Dr. Green addressed not only the existence of clinical pneumoconiosis by autopsy, he also addressed whether the miner's COPD arose out of coal mine employment. See 20 C.F.R. §718.201(a)(2)(b). Because Dr. Green's opinion was not a mere pathology report but also addressed the existence of legal pneumoconiosis based on medical data beyond the autopsy, we hold that the administrative law judge properly considered it a documented and reasoned medical opinion at Section 718.202(a)(4). See *Clark, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987).

Employer argues that assuming Dr. Green's opinion could be considered at Section 718.202(a)(4), the administrative law judge erred by not discussing Dr. Caffrey's report again at subsection (a)(4), because Dr. Caffrey also reviewed medical records. Employer's Brief at 23-24. It would have been better for the administrative law judge to specifically discuss Dr. Caffrey's report again, but we conclude that employer has not identified reversible error because the administrative law judge reasonably found Dr. Caffrey's report to be outweighed. The administrative law judge found that Dr. Green's opinion was "well-documented and well-reasoned." Decision and Order at 15. He further considered Dr. Fino's admission of being put "in a quandary" regarding the existence of pneumoconiosis after reviewing Dr. Green's report, because of Dr. Fino's regard for Dr. Green's expertise. Employer's Exhibit 6 at 6. The administrative law judge then concluded: "I find that the reports of the other physicians who determined that the evidence does not support finding the existence of pneumoconiosis are outweighed by the opinions of these two physicians [Drs. Sundaram and Green]." Decision and Order at 15-16. Having given greater weight to both Drs. Sundaram and Green individually for valid reasons, see *Groves, supra*; *Rowe, supra*; *Clark, supra*, the administrative law judge found that together, the opinions of Drs. Sundaram and Green outweighed the other doctor's opinions. Because Dr. Caffrey's opinion was found to be outweighed, we need not remand this case for the administrative law judge to

specifically discuss Dr. Caffrey's report. Based on the foregoing discussion, we affirm the administrative law judge's finding at Section 718.202(a)(4) as supported by substantial evidence and in accordance with law.

Pursuant to Section 718.205(c)(2), the administrative law judge considered several items of evidence. A "Death Summary" completed by Dr. Sundaram after the miner's final, month-long hospitalization, related the events leading to the miner's death from respiratory failure and pneumonia. Director's Exhibit 21. The miner's death certificate, completed by Dr. Sundaram, listed the cause of death as COPD due to coal workers' pneumoconiosis. Director's Exhibit 11. Dr. Davis's autopsy report identified bronchopneumonia sufficient "to account for the patient's immediate death." Director's Exhibit 24.

In an October 10, 2000 memo to his file, Dr. Sundaram recounted the miner's increasing shortness of breath and wrote that the miner died "due to pneumonia, respiratory distress caused from coal workers' pneumoconiosis. I believe that Mr. Bentley's death was probably hastened by his coal workers' pneumoconiosis." Director's Exhibit 21. At his deposition, Dr. Sundaram explained that coal workers' pneumoconiosis and COPD due in part to coal dust hastened the miner's death by making him more susceptible to pneumonia and leaving him less able to fight off the infection than he otherwise would have been. Claimant's Exhibit 3 at 13-14. Dr. Green opined that pneumoconiosis hastened the miner's death in that coal dust exposure contributed to his COPD, and complications of the COPD, primarily pneumonia, caused death. Claimant's Exhibit 1 at 5; Employer's Exhibit 8 at 16, 17, 23-24. Drs. Caffrey, Fino, and Branscomb stated that clinical pneumoconiosis was either absent, or assuming it was present, was of insufficient degree to hasten the miner's death. Employer's Exhibits 2-7. They attributed the miner's COPD entirely to smoking, and thus they attributed the miner's death to COPD and pneumonia unrelated to coal mine dust. *Id.*

The administrative law judge applied the "hasten death" standard, and found that Drs. Sundaram and Green explained that "the miner's obstructive lung disease was related to his coal mine employment and that the weakened pulmonary condition led to pneumonia and to death." Decision and Order at 17. The administrative law judge chose to again give greater weight to Dr. Sundaram's opinion because of his treatment of the miner. *Id.* The administrative law judge also gave "more weight" to the opinion of Dr. Green, finding it "well reasoned" and "consistent with the medical evidence of record." *Id.* The administrative law judge noted that Drs. Fino, Branscomb, and Caffrey concluded that any pneumoconiosis present was insignificant and would not have contributed to death. The administrative law judge observed that under the "hasten death in any way" standard, even if an impairment from pneumoconiosis were minor, "it would be a contributing factor in the miner's death." *Id.* The administrative law judge concluded that pneumoconiosis hastened the miner's death.

Employer argues that the administrative law judge mechanically and irrationally credited Dr. Sundaram as the treating physician, and that Dr. Sundaram's opinion is speculative and unreasoned as a matter of law. Employer's Brief at 25-27. As already discussed, the administrative law judge permissibly analyzed the treating physician's opinion, see *Groves, supra*, and review of Dr. Sundaram's death causation opinion does not support employer's contention that the opinion is speculative and unreasoned as a matter of law. Claimant's Exhibit 3 at 13-15, 18. Employer further argues that Dr. Green's opinion is not substantial evidence because it is speculative and does not relate to the specific facts of this miner's death. Employer's Brief at 27-29. However, review of Dr. Green's report and deposition as a whole reflects that he was clear in stating that pneumoconiosis hastened this particular miner's death, and did so by contributing to the chronic lung disease that caused death. Claimant's Exhibit 1 at 5; Employer's Exhibit 8 at 17, 23-24. As noted, the administrative law judge found Dr. Green's opinion "well reasoned" and "consistent with the medical evidence of record." Decision and Order at 17. Employer presents no reason to disturb this discretionary determination by the administrative law judge. See *Rowe, supra*; *Trumbo, supra*. The death causation mechanism identified by Drs. Sundaram and Green, that COPD arising out of coal mine employment led to pneumonia and impaired the miner's ability to fight off pneumonia, constitutes substantial evidence satisfying the hasten death standard. See *Stephens*, 298 F.3d at 515, 522-23, --- BLR at --- (affirming award based on physician's opinion that pneumoconiosis caused pneumonia, leading to respiratory failure and death). Therefore, we reject employer's challenge to the administrative law judge's weighing of Dr. Sundaram's and Dr. Green's opinions.

Finally, employer contends that the administrative law judge mischaracterized the findings of Drs. Fino, Caffrey, and Branscomb as supporting a finding that pneumoconiosis hastened the miner's death, when these physicians concluded that pneumoconiosis did not hasten death. Employer's Brief at 30-31. Employer takes issue with the administrative law judge's concluding statement that even if any impairment from pneumoconiosis was minor, it would be a contributing factor to death. Upon review, we conclude that although the meaning of the administrative law judge's last sentence is unclear, it does not undermine the administrative law judge's determination that the opinions of Drs. Sundaram and Green outweighed the contrary opinions to establish that pneumoconiosis hastened the miner's death by leading to a fatal pneumonia. See *Groves, supra*; *Rowe, supra*; *Trumbo, supra*. Therefore, any error by the administrative law judge was harmless. See *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Therefore, we affirm the administrative law judge's finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Consequently, we affirm the award of survivor's benefits.

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

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

I concur:

BETTY JEAN HALL
Administrative Appeals Judge

GABAUER, Administrative Appeals Judge, concurring:
I concur in the holding that substantial evidence supports the award of survivor's benefits. I write separately to indicate that I would instead affirm the finding of the

existence of pneumoconiosis at 20 C.F.R. §§718.202(a)(2), 718.202(a)(4) based on the administrative law judge's permissible determination to accord greater weight to Dr. Green's opinion as well explained and more thorough than the other opinions of record. Because Dr. Green's opinion was properly credited and constitutes substantial evidence of pneumoconiosis, the Board need not address the administrative law judge's discussion of other physicians' descriptions of "anthracosis" and "anthracotic pigment," or the administrative law judge's questionable decision to accord "greatest weight," Decision and Order at 17, to the opinion of Mr. Bentley's treating physician, Dr. Sundaram, despite finding that Dr. Sundaram's "treatment notes and brief statements in the record are not thorough reports. . . ." Decision and Order at 15; see *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 710, --- BLR --- (6th Cir. 2002)(administrative law judge must critically analyze the documentation and reasoning of a treating opinion). Similarly, I would affirm the finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), based on the administrative law judge's proper crediting of Dr. Green's opinion as well reasoned and consistent with the medical evidence.

PETER A. GABAUER, JR.
Administrative Appeals Judge