

BRB No. 00-0128 BLA

MARY HAZEL SPROLES)	
(Widow of JAMES SPROLES))	
)	
Claimant-Respondent)	
)	
v.)	
)	
BULLION HOLLOW COAL COMPANY)	DATE ISSUED:
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT OF)	
LABOR)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher, Jr. (Wolfe & Farmer), Norton, Virginia, for claimant.

John D. Maddox (Arter & Hadden, LLP), Washington, D.C., for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (1995-BLA-2167) of Administrative Law Judge Thomas M. Burke on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The miner, James Sproles, died on November 11, 1994, and claimant, the miner's widow, filed a survivor's claim on December 5, 1994. Decision and Order at 2; Director's Exhibit 1. Considering the claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that although the clear preponderance of the x-ray evidence of record was negative for pneumoconiosis, the medical opinion evidence was sufficient to

establish that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge also found claimant entitled to the rebuttable presumption that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), and that there was insufficient evidence to rebut the presumption. The administrative law judge then found the evidence sufficient to establish that pneumoconiosis was a substantial contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(c)(2). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge improperly credited the medical reports of Drs. Sargent, Robinette and Barongan over the reports of Drs. Renn and Castle in finding that claimant established the existence of pneumoconiosis at Section 718.202(a)(4). Employer also contends that the administrative law judge erred in finding that the miner's death was due to pneumoconiosis under Section 718.205(c)(2). Claimant responds in support of the administrative law judge's award of benefits. In a reply brief, employer reiterates the contentions raised in its Petition for Review and brief. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not intend presently to participate in this appeal unless specifically requested to do so by the Board.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon the Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304; see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Furthermore, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this cases arises, has held that in order for a survivor to demonstrate that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death pursuant to 20 C.F.R. §718.205(c), the survivor may demonstrate that the miner's death was hastened by the presence of his

pneumoconiosis. See *Shuff v. Cedar Coal Co.*, 969 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

In challenging the administrative law judge's award of benefits, employer contends that the administrative law judge erred in his weighing of the medical opinion evidence pursuant to Section 718.202(a)(4). In particular, employer contends that the administrative law judge erred in crediting the opinions of Drs. Robinette and Barongan over the contrary opinions of Drs. Renn and Castle without providing an adequate rationale for his weighing of these opinions and erred in failing to discuss the credentials of Drs. Renn and Castle. These contentions have merit. The threshold issue in a survivor's claim is whether the miner had pneumoconiosis as defined by the Act and regulations. See 30 U.S.C. §902(b); 20 C.F.R. §718.201; *Trumbo*; *supra*. The relevant evidence in this record includes x-ray readings, examination and medical treatment reports, and multiple hospitalization records. The record also contains consultation reports based on reviews of the miner's medical records. In weighing the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge found that the opinions of Drs. Sargent, Barongan and Robinette, who diagnosed the existence of pneumoconiosis, were more credible than the contrary opinions of "Drs. Renn and Castle who merely reviewed medical records." Decision and Order at 19. However, as employer correctly contends, the administrative law judge failed to adequately explain the bases for his conclusion. In particular, the administrative law judge's decision to give determinative weight to the opinions of Drs. Barongan and Robinette, without considering all of the factors bearing on the relative merits of these opinions and the conflicting opinions of Drs. Renn and Castle contravenes the Administrative Procedure Act (the APA), 5 U.S.C. §557(c)(3)(A), as incorporated by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d), and 30 U.S.C. §932(a), and the decisions of the United States Court of Appeals for the Fourth Circuit in *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998) and *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). We therefore vacate the administrative law judge's finding that the evidence establishes the existence of pneumoconiosis pursuant to Section 718.202(a)(4) and remand the case to the administrative law judge for reconsideration thereunder.

In evaluating the medical opinion evidence, the administrative law judge should assess "the qualifications of the respective physicians, the explanation of their medical opinions, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses." *Akers, supra*; see *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997). In addition, the Fourth Circuit has also held that an administrative law judge may not discredit a physician's opinion solely because the physician did not examine the

claimant. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2- (4th Cir. 2000). Since the administrative law judge did not consider the credentials of all of the physicians of record, on remand he should conduct a full review of the medical opinions on the issue of the existence of pneumoconiosis. Furthermore, the administrative law judge must consider all factors relevant to the quality of the evidence in determining whether the opinions of Drs. Barongan and Robinette, as well as the opinions of Drs. Renn and Castle, are supported by the underlying documentation and adequately explained. *Collins v. J & L Steel*, 21 BLR 1-181 (1999). Additionally, in *Compton*, issued subsequent to the administrative law judge's Decision and Order, the Fourth Circuit held that, based on the statutory language at 30 U.S.C. §923(b), all relevant evidence is to be considered together rather than merely within the discrete subsections of 20 C.F.R. §718.202(a)(1)-(4) in determining whether claimant has met her burden of establishing the existence of pneumoconiosis by a preponderance of all of the evidence. If, on remand, the administrative law judge again finds the medical evidence sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), he must then weigh all of the evidence relevant to Section 718.202(a)(1)-(4) together in determining whether claimant has established the existence of pneumoconiosis. *Compton*, *supra*.

Furthermore, we vacate the administrative law judge's finding that the evidence was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). The administrative law judge, in finding the evidence sufficient to establish that the miner's death was due to pneumoconiosis, apparently relied on his weighing of the medical evidence pursuant to Section 718.202(a)(4), wherein he accorded greater weight to the examining and/or treating physicians, who found pneumoconiosis contributed to the miner's death, than to the opinions of consulting physicians, who attributed the miner's chronic obstructive pulmonary disease to cigarette smoking. Decision and Order at 20-21. Therefore, in light of our decision to vacate the administrative law judge's findings pursuant to Section 718.202(a)(4), see discussion, *supra*, we further vacate his Section 718.205(c) finding and remand the case to the administrative law judge to provide valid reasons for his conclusion. See *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); see also *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985). If, on remand, the administrative law judge finds that claimant has established the existence of pneumoconiosis pursuant to Section 718.202(a), he must then determine whether the miner's pneumoconiosis was a substantially contributing cause of death pursuant to Section 718.205(c). *Shuff*, *supra*.

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits is vacated and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge