

BRB No. 01-0289 BLA

SHIRLEY SPARKS	)	
(Widow of WILLARD SPARKS)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BILL BRANCH COAL CORPORATION	)	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 on Remand of Anne Beytin Torkington, Administrative Law Judge, United States Department of Labor.

Vincent J. Carroll, Richlands, Virginia, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd, PLLC), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand (97-BLA-1763) of Administrative Law Judge Anne Beytin Torkington awarding benefits 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).<sup>1</sup> This case has been before the Board

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<sup>1</sup>The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2001).

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive

previously.<sup>2</sup> In the prior Decision and Order, the administrative law judge noted that the instant claim is a modification request and found over thirty years of qualifying coal mine employment. Considering entitlement pursuant to the provisions of 20 C.F.R. Part 718 (2000), the administrative law judge concluded that the evidence of record was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205 (2000). Accordingly, benefits were awarded. On appeal, the Board affirmed the administrative law judge's award of benefits. *See Sparks v. Bill Branch Coal Corp.*, BRB Nos. 95-0478 BLA and 98-1069 BLA (April 30, 1999)(unpublished). Employer appealed and the United States Court of Appeals for the Fourth Circuit vacated the award of benefits, as the administrative law judge improperly credited the opinion of the autopsy prosector, and remanded the case for the administrative law judge to provide a sufficient explanation of her

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relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F. Supp.2d 47 (D.D.C. 2001).

<sup>2</sup>The procedural history of this case was set forth in detail in the Board's prior decision in *Sparks v. Bill Branch Coal Corp.*, BRB Nos. 95-0478 BLA and 98-1069 BLA (April 30, 1999)(unpublished), which is incorporated herein by reference.

reasoning with respect to the medical evidence.<sup>3</sup> *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, BLR 2- (4th Cir. 2000).

On remand, the administrative law judge concluded that claimant established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205 (2000) based upon the opinion of Dr. Jones. Decision and Order on Remand at 15-17. Accordingly, benefits were awarded. In the instant appeal, employer contends that the administrative law judge erred in finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205 (2000) as she failed to address the reliability of the medical opinion evidence. Claimant has not responded in the instant appeal. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in this appeal.

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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. *See* 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 725.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). 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) (2001); *see also Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S. Ct. 969 (1993).

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<sup>3</sup>This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner was employed in the coal mine industry in the Commonwealth of Virginia. *See* Director's Exhibit 2; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Employer initially argues that the administrative law judge selectively analyzed the medical opinion evidence and thus the award of benefits should be reversed. We do not find merit in employer's argument. Employer's contention constitutes a request that the Board reweigh the evidence, which is beyond the scope of the Board's powers. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1988). The administrative law judge must determine the credibility of the evidence of record and the weight to be accorded this evidence when deciding whether a party has met its burden of proof. *See Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986).

Employer further contends that the administrative law judge erred in finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205 (2000) as she failed to specifically discuss the basis for the physicians' conclusions or provide any rationale for finding the evidence reasoned and supportive of claimant's burden. We agree. In addressing the medical opinions of record pursuant to 20 C.F.R. §718.205 (2000), the administrative law judge gave less weight to the opinions of Drs. Fino, Naeye, Lane, Hansbarger, Anderson, Caffrey, and Kleinerman as the physicians did not address the role that the miner's other pulmonary conditions played in his death. Decision and Order on Remand at 15-17. The administrative law judge concluded that the well documented and reasoned opinion of Dr. Jones was more persuasive than the opinion of Dr. Naeye as Dr. Jones was not twisting the facts. Decision and Order on Remand at 15-17. The administrative law judge then concluded that the medical opinion evidence establishes that the miner's death was due to pneumoconiosis. Decision and Order on Remand at 17.

The factors to which the administrative law judge referred are relevant in determining the weight to be assigned a particular medical opinion, but the administrative law judge must first specifically determine if the opinions of record are reasoned and documented and therefore credible. *See Trumbo, supra*. In the instant case, the administrative law judge did not specifically set forth her basis for determining if the opinions were reasoned and documented but only compared the physicians' findings on review of the evidence. Decision and Order on Remand at 15-17. The administrative law judge did not review the medical opinions in the context of their objective evidence which may provide a basis for determining the credibility of the opinions.<sup>4</sup> *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987);

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<sup>4</sup>Contrary to the administrative law judge's finding, Dr. Castle did not "simply make a conclusory statement" but offered an opinion based upon his review of the evidence of record. Decision and Order on Remand at 15; Director's Exhibits 50, 52. Additionally, it appears that the administrative law judge substituted her opinion for that of Dr. Naeye as she inferred that the earlier objective evidence tainted the physician's opinion. Decision and Order on Remand at 15. The record indicates that Dr. Naeye based his opinion on all the available evidence. Director's Exhibits 11, 93; Employer's Exhibit 1. Further, Drs. Lane, Fino, Hansbarger, Anderson, Caffrey and Kleinerman properly focused on the relevant issue

*Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order on Remand at 15-17.

In determining if a party has met its burden of proof, the United States Court of Appeals for the Fourth Circuit has held that an administrative law judge should consider the qualifications of the physicians, the explanations of their medical opinions and the documentation underlying their opinions. See *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). Moreover, a physician's opinion based upon the review of other opinions and objective test results, may be substantial evidence in support of an administrative law judge's findings. See *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989). 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 judgements and the sophistication and bases of their diagnosis." *Akers, supra*; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997). In this case, as the administrative law judge did not specifically consider and discuss the underlying documentation of the various medical opinions of record, including the opinions of the pulmonary experts, in view of the case law from the Fourth Circuit, we vacate the administrative law judge's finding that the miner's death was due to pneumoconiosis was established by the medical opinion evidence and remand this case for a full review of the record as a whole in light of these authorities. Furthermore, the administrative law judge, in determining if claimant has met her burden of proof, must consider all factors relevant to the quality of the evidence in determining whether the opinions of record are supported by the underlying documentation and adequately explained.

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of whether the miner's death was due to pneumoconiosis after reviewing the evidence of record. Decision and Order on Remand at 17; Director's Exhibits 47, 50-53,56, 58, 59, 85; Employer's Exhibit 1. Finally, the administrative law judge erred in concluding that Dr. Hansbarger was hostile to the Act as the physician does not foreclose all possibility that simple pneumoconiosis can contribute to death but rather offered his opinion based upon the particular evidence available for review in this case. Decision and Order on Remand at 17; Director's Exhibits 47, 51.

*See Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Trumbo, supra*; *Fields, supra*; *Lucostic, supra*.

Accordingly, the administrative law judge's Decision and Order awarding benefits is vacated and the case is remanded to the Office of Administrative Law Judges for further consideration consistent with this opinion.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge