

BRB Nos. 09-0280 BLA
and 09-0448 BLA

WILLODENE LINGENFELTER)	
(Widow of and o/b/o CORY)	
LINGENFELTER))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
FREEMAN UNITED COAL MINING)	DATE ISSUED: 11/30/2009
COMPANY)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jeffrey Tureck,
Administrative Law Judge, United States Department of Labor.

Sandra Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

John A. Washburn (Gould & Ratner), Chicago, Illinois, for employer.

Sarah M. Hurley (Deborah Greenfield, Acting Deputy Solicitor; Rae Ellen
Frank James, Associate Solicitor; Michael J. Rutledge, Counsel for
Administrative Litigation and Legal Advice), Washington, D.C., for the
Director, Office of Workers' Compensation Programs, United States
Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits of Administrative Law Judge Jeffrey Tureck rendered on a miner's claim (2005-BLA-05474) and a survivor's claim (2005-BLA-05475) 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 adjudicated the claims pursuant to 20 C.F.R. Part 718, based on the September 4, 2002 filing date of the miner's claim, and the December 30, 2003 filing date of the survivor's claim. With respect to the miner's claim, the administrative law judge found that claimant established that a mistake in a determination of fact was made in denying the miner's claim because simple pneumoconiosis was established. The administrative law judge, therefore, found that claimant met her initial burden on modification in the miner's claim pursuant to 20 C.F.R. §725.310. Turning to the merits of the miner's claim, the administrative law judge found that while the medical evidence failed to establish the presence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, 30 U.S.C. §921(c)(3), it did establish that the miner's simple pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b), and that the miner had a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b). Nonetheless, the administrative law judge denied benefits in the miner's claim because the evidence failed to establish that the miner's total disability was due to

¹ Claimant is the widow of the miner. The miner filed a claim for benefits on September 4, 2002, which was denied by the district director in a Proposed Decision and Order dated August 11, 2003. Director's Exhibits 2, 22. No action was taken on the claim during the thirty days after the district director's Proposed Decision and Order. However, while the claim was still before the district director, the miner died on November 7, 2003. Director's Exhibit 23. Claimant filed a survivor's claim on December 30, 2003. Director's Exhibit (Survivor) 2A. In an Order to Show Cause, the district director stated that the survivor's claim is also an implied request for modification of the miner's claim. Director's Exhibit 25. On May 6, 2004, the district director issued a Proposed Decision and Order, granting the request for modification and awarding benefits in the miner's claim. Director's Exhibit 26. In a Proposed Decision and Order issued on October 20, 2004, the district director awarded benefits in the survivor's claim. Director's Exhibit (Survivor) 21A. Both the miner's claim and the survivor's claim were subsequently forwarded to the Office of Administrative Law Judges, where they were consolidated for hearing, pursuant to employer's request. Administrative Law Judge Jeffrey Tureck conducted a formal hearing on March 18, 2008. By Decision and Order dated December 5, 2008, Judge Tureck denied both claims. Claimant appealed to the Board, contesting the denial of benefits in both the miner's claim and the survivor's claim. By letter dated January 13, 2009, the Board, inadvertently, acknowledged only the appeal of the miner's claim, BRB No. 09-0280 BLA. By Order dated May 15, 2009, the Board acknowledged the appeal of the survivor's claim, BRB No. 09-0448 BLA. These claims have been consolidated on appeal for purposes of decision only.

pneumoconiosis pursuant to 20 C.F.R. §718.204(c). With respect to the survivor's claim, the administrative law judge denied benefits in the claim because he found that the medical evidence failed to establish that the miner's death was caused by pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits in both the miner's and the survivor's claims.

On appeal, claimant contends that the administrative law judge erred in denying benefits in both the miner's and the survivor's claims. Specifically, claimant contends that the administrative law judge erred in finding that the irrebuttable presumption of total disability and death due to pneumoconiosis at Section 718.304 was not available in this case. Claimant contends that the administrative law judge erred in failing to consider all of the evidence on the issue of complicated pneumoconiosis and did not properly evaluate it. Claimant also contends that the administrative law judge erred in finding that the evidence failed to establish disability causation pursuant to Section 718.204(c) in the miner's claim, and death due to pneumoconiosis pursuant to Section 718.205(c) in the survivor's claim. In addition, claimant contends that the administrative law judge erred in admitting Dr. Wheeler's May 21, 2008 supplemental x-ray report as rehabilitative evidence pursuant to 20 C.F.R. §725.414(a)(3)(ii). Therefore, claimant contends that the administrative law judge's denial of benefits in both the miner's and the survivor's claims must be vacated and the case remanded for reconsideration. Lastly, claimant contends that, because the administrative law judge showed bias in his consideration of the medical evidence, the case must be assigned to a different administrative law judge on remand. Employer responds, urging affirmance of the administrative law judge's denial of benefits in both the miner's and the survivor's claims. The Director, Office of Workers' Compensation Programs (the Director), in a limited response, agrees with claimant that the administrative law judge erred in admitting Dr. Wheeler's May 21, 2008 supplemental x-ray report as rehabilitative evidence, but takes no position on the other issues raised on 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.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that the miner suffered from pneumoconiosis, that the

² This case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit, as the miner's coal mining employment was in Illinois. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 5.

miner's pneumoconiosis arose out of coal mine employment, that the miner was totally disabled by a respiratory or pulmonary impairment, and that the miner's total disability was due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of 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).

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's 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 pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 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. 20 C.F.R. §718.205(c)(5); *Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992).

Section 411(c)(3) of the Act, implemented by Section 718.304 of the regulations, provides that there is an irrebuttable presumption of total disability due to pneumoconiosis if the miner suffered from a chronic dust disease of the lung which, (A) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (C) when diagnosed by other means, is a condition that would yield results equivalent to (A) or (B). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. In determining whether claimant has established invocation of the irrebuttable presumption of total disability and death due to pneumoconiosis pursuant to Section 718.304, the administrative law judge must first determine whether the evidence in each of the categories tends to establish the presence of complicated pneumoconiosis, and then he must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *Gollie v. Elkay Mining Corp.*, 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991)(*en banc*); see also *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993).

At the outset, we address claimant's contention that the administrative law judge erred in admitting the May 21, 2008 supplemental x-ray report of Dr. Wheeler, Employer's Exhibit 7, as rehabilitative evidence pursuant to Section 725.414(a)(3)(ii). Claimant contends that the May 21, 2008 supplemental x-ray report is not rehabilitative evidence because it does not respond to Dr. Wheeler's original negative x-ray

interpretation of the May 22, 2001 x-ray, Employer's Exhibit 1, but, instead, responds only to the positive interpretation of Dr. Smith, which was submitted as rebuttal evidence by claimant, Claimant's Exhibit 5. Employer contends, however, that Dr. Wheeler's supplemental x-ray report is rehabilitative evidence, since Dr. Wheeler, by criticizing Dr. Smith's x-ray reading was, in effect, rehabilitating his own x-ray reading. The Director, however, agrees with claimant that the administrative law judge erred in admitting Dr. Wheeler's May 21, 2008 supplemental x-ray report as rehabilitative evidence under Section 725.414(a)(3)(ii). Like claimant, the Director contends that the supplemental report does not buttress or further explain Dr. Wheeler's original negative x-ray reading, but merely criticizes Dr. Smith's positive rebuttal x-ray reading. Director's Response Letter at 1-2.

We agree with claimant and the Director. Section 725.414(a)(3)(ii) provides, in relevant part:

[W]here the claimant has submitted rebuttal evidence under paragraph (a)(2)(ii) of this section , the responsible operator shall be entitled to submit an additional statement from the physician who originally interpreted the chest X-ray or administered the objective testing. Where the rebuttal evidence tends to undermine the conclusion of a physician who prepared a medical report submitted by the responsible operator, the responsible operator shall be entitled to submit an additional statement from the physician who prepared the medical report explaining his conclusion in light of the rebuttal evidence.

20 C.F.R. §725.414(a)(3)(ii). Herein, Dr. Wheeler's supplemental x-ray report did not attempt to further explain his original negative x-ray reading, but merely critiqued the rebuttal x-ray reading of Dr. Smith, without further comment on Dr. Wheeler's own original negative interpretation. *Compare* Employer's Exhibits 1, 7 *with* Claimant's Exhibit 5. Because Dr. Wheeler's supplemental x-ray report does not rehabilitate his original negative x-ray interpretation, but merely comments on Dr. Smith's rebuttal x-ray reading, we vacate the administrative law judge's admission of this report as rehabilitative evidence under Section 725.414(a)(3)(ii).

However, we reject claimant's argument that the administrative law judge erred in not allowing claimant to submit a rehabilitative x-ray report by Dr. Smith, responding to Dr. Wheeler's supplemental x-ray report. Contrary to claimant's contention, the regulations do not permit the rehabilitation of rebuttal evidence, but, rather, allow only for the rehabilitation of a party's affirmative evidence. 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii). Consequently, claimant is not entitled to submit an additional statement from Dr. Smith, further addressing his positive x-ray interpretation.

Turning to the merits of the case, the administrative law judge stated that the overriding issue in this case is whether the miner had complicated pneumoconiosis pursuant to Section 718.304, thereby entitling claimant to the irrebuttable presumption of total disability due to pneumoconiosis in the miner's claim and death due to pneumoconiosis in the survivor's claim. In addressing the issue of complicated pneumoconiosis, the administrative law judge noted that there are three alternative methods for establishing the existence of complicated pneumoconiosis, *i.e.*, x-ray evidence of large opacities; pathology evidence exhibiting massive lesions in the lungs; or other evidence, such as CT scans, which yield similar findings. The administrative law judge found, however, that because the record contained autopsy evidence and medical opinion evidence derived therefrom, the x-ray and CT scan evidence was entitled to little weight. Decision and Order at 3. Consequently, the administrative law judge did not consider the x-ray evidence at Section 718.304(a) and the CT scan evidence at Section 718.304(c). Instead, the administrative law judge turned to the autopsy report and deposition of Drs. Hnilica, the autopsy prosector, who found complicated pneumoconiosis, and the report of Dr. Askin, who reviewed the autopsy evidence and found no evidence of complicated pneumoconiosis. Noting Dr. Askin's superior professional credentials,³ in particular that Dr. Askin has "extraordinary expertise in pathology in general and pulmonary pathology in particular[.]" the administrative law judge found that "[t]here can be no doubt that [Dr. Askin's] opinion far outweighs that of Dr. Hnilica."⁴ Decision and Order at 5-6. Therefore, the administrative law judge found that while the autopsy evidence established the existence of simple pneumoconiosis, it did not establish the existence of complicated pneumoconiosis. *Id.* The administrative law judge also considered the medical opinion of Dr. Cohen, diagnosing the presence of complicated pneumoconiosis, the contrary opinion of Dr. Repsher, that simple, but not complicated pneumoconiosis was present, and the opinion of Dr. Skillrud, who opined

³ Specifically, the administrative law judge noted that, in addition to being Board-certified in anatomic pathology, Dr. Askin is a professor and the Director of Surgical Pathology at the Johns Hopkins Medical Institution. The administrative law judge further noted that Dr. Askin has been on medical school faculties continuously since 1973, the last 27 as a full professor, and has authored or co-authored over 150 peer-review journal articles, as well as numerous books and book chapters, a large number of which concern pulmonary pathology. Decision and Order at 5.

⁴ The administrative law judge noted that Dr. Hnilica was a Board-certified pathologist in anatomic, clinical, chemical, radioisotopic, and forensic pathology. Decision and Order at 3. Despite these certifications and Dr. Hnilica's practice for over 40 years in pathology, the administrative law judge found her opinion suspect because of her "complete lack of familiarity of coal workers' pneumoconiosis." Decision and Order at 5.

that there was medical data “suspicious” for complicated pneumoconiosis. The administrative law judge found that Dr. Cohen’s opinion had no probative value because it was based on Dr. Hnilica’s autopsy report, which was not credited. *See, infra*. Consequently, the administrative law judge credited the opinion of Dr. Repsher, that complicated pneumoconiosis was not present, because Dr. Repsher relied on Dr. Askin’s more credible autopsy findings. Regarding the opinion of Dr. Skillrud, the administrative law judge accorded it no weight because Dr. Skillrud did not explain his diagnosis of pneumoconiosis and did not explain his finding that the chest x-ray is “consistent with pneumoconiosis” and “suspicious for” progressive massive fibrosis. Decision and Order at 6. Accordingly, the administrative law judge found, on reviewing the autopsy and medical opinion evidence, that complicated pneumoconiosis was not established at Section 718.304(b) and that claimant was not entitled to the irrebuttable presumption of total disability and death due to pneumoconiosis.

Claimant challenges the administrative law judge’s determination that the medical evidence is insufficient to establish the existence of complicated pneumoconiosis and is, therefore, insufficient to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis and death due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Specifically, claimant contends that the administrative law judge erred in his weighing of the medical evidence at Section 718.304(b), particularly, the autopsy report of Dr. Hnilica, the autopsy prosector, and the medical opinion of Dr. Cohen. Claimant also contends that the administrative law judge erred in failing to consider the relevant evidence under each of the three separate subsections at Section 718.304(a)-(c), *i.e.*, the x-ray and CT scan evidence, as required. *See Melnick*, 16 BLR at 1-33-34. There is merit, in part, to claimant’s contentions.

As claimant correctly contends, the administrative law judge erred in not considering the relevant evidence under each of the subsections at Section 718.304, and determining whether it established complicated pneumoconiosis under that subsection. *See Melnick*, 16 BLR at 1-33-34. The presence of autopsy evidence and medical opinion evidence derived therefrom, does not mean that the administrative law judge may summarily dismiss the other relevant evidence, *i.e.*, x-ray and CT scan evidence. *See Consolidation Coal Co. v. Director, OWCP [Stein]*, 294 F.3d 885, 22 BLR 2-409, 2-420 (7th Cir. 2002); *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 468, 22 BLR 2-311, 2-318 (7th Cir. 2001); *Railey*, 972 F.2d at 182, 16 BLR at 2-126. The Act requires that “[i]n determining the validity of claims under this part, all relevant evidence shall be considered.” 30 U.S.C. §923(b); *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh’g denied*, 484 U.S. 1047 (1988). Because the administrative law judge did not sufficiently set forth and discuss the x-ray evidence at Section 718.304(a) and the CT scan evidence at Section 718.304(c), we vacate his finding that claimant has not established the existence of complicated pneumoconiosis under Section 718.304. *See Melnick*, 16 BLR at 1-33-34. We remand the case to the administrative law

judge to consider the relevant evidence at each subsection of Section 718.304, and to determine whether it establishes complicated pneumoconiosis under that subsection. Having done that, the administrative law judge must then weigh all of the evidence together to determine whether complicated pneumoconiosis is established at Section 718.304.

Specifically, on remand, the administrative law judge must determine whether the x-ray evidence is sufficient to establish complicated pneumoconiosis under Section 718.304(a), and whether the CT scan evidence is sufficient to establish complicated pneumoconiosis under Section 718.304(c). After making specific findings at the relevant subsections, *i.e.*, Section 718.304(a)-(c), the administrative law judge must weigh the evidence at those subsections together to determine whether complicated pneumoconiosis is established. If the administrative law judge finds, on remand, that complicated pneumoconiosis is established and that the complicated pneumoconiosis arose out of coal mine employment, then claimant would be entitled to the irrebuttable presumption that the miner's total disability and death were due to pneumoconiosis and to an award of benefits in both the miner's and the survivor's claims. 20 C.F.R. §718.304; *Gollie*, 22 BLR at 1-311; *Melnick*, 16 BLR at 1-33-34; *see also Lester*, 993 F.2d at 1145-46, 17 BLR at 2-117-18. If, however, the administrative law judge finds that complicated pneumoconiosis is not established at Section 718.304 after weighing all the relevant evidence together, claimant would not be entitled to the irrebuttable presumption that the miner's total disability and death were due to pneumoconiosis. The administrative law judge must then consider whether the evidence establishes that the miner's disability was due to pneumoconiosis at Section 718.204(c) in the miner's claim and whether the miner's death was due to pneumoconiosis at Section 718.205(c) in the survivor's claim.

In the interest of judicial efficiency, we will now address claimant's specific contentions regarding the administrative law judge's weighing of the autopsy and medical opinion evidence. Pursuant to Section 718.304(b), contrary to claimant's contention, the administrative law judge permissibly accorded greater weight to the autopsy report of Dr. Askin, who found that the autopsy evidence did not establish complicated pneumoconiosis. Within a reasonable exercise of his discretion, the administrative law judge credited the opinion of Dr. Askin because his professional credentials were superior to those of Dr. Hnilica. *Amax Coal Co. v. Director, OWCP [Chubb]*, 312 F.3d 882, 22 BLR 2-514 (7th Cir. 2002); *Zeigler Coal Co. v. Kelley*, 112 F.3d 839, 21 BLR 2-92 (7th Cir. 1997); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). Additionally, the administrative law judge reasonably accorded little weight to Dr. Hnilica's opinion because it was contradictory, *i.e.*, the physician proffered inconsistent diagnoses in her written autopsy report and her deposition testimony. *See Hopton v. United States Steel Corp.*, 7 BLR 1-12 (1984). Further, within a reasonable exercise of his discretion, the administrative law judge accorded little weight to Dr. Cohen's opinion, diagnosing complicated pneumoconiosis, because it was based on the

autopsy report of Dr. Hnilica, which the administrative law judge did not credit. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). Instead, the administrative law judge rationally found the opinion of Dr. Repsher, that the miner did not have complicated pneumoconiosis, to be more credible because it was based on the more reliable autopsy report of Dr. Askin. *See Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994); *Clark*, 12 BLR at 1-155; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987). Additionally, the administrative law judge properly rejected the opinion of Dr. Skillrud that there was data “suspicious” for complicated pneumoconiosis because it was not sufficiently explained. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989). Consequently, we affirm the administrative law judge’s finding that the autopsy and medical opinion evidence derived therefrom failed to establish complicated pneumoconiosis pursuant to Section 718.304(b).

Turning to Section 718.204(c), in discussing the evidence relevant to disability causation in the miner’s claim, the administrative law judge found that Dr. Cohen’s opinion was the only opinion supportive of claimant’s burden.⁵ Weighing the opinion, the administrative law judge permissibly found that it failed to establish disability causation because Dr. Cohen relied on Dr. Hnilica’s diagnosis of complicated pneumoconiosis, which the administrative law judge did not credit. *See, infra* at 9. The administrative law judge also found that Dr. Cohen mischaracterized the evidence, *i.e.*, he failed to adequately discuss the nature of the miner’s coal mine employment, a vast majority of which was as a mechanic in an outside garage, and he minimized the miner’s smoking history. *Livermore v. Amax Coal Co.*, 297 F.3d 668, 22 BLR 2-399 (7th Cir. 2002); *see also Midland Coal Co. v. Director, OWCP [Shores]*, 358 F.3d 486, 23 BLR 2-18 (7th Cir. 2004). Therefore, because the administrative law judge permissibly found that the only opinion supportive of claimant’s burden at Section 718.204(c) was not credible, we affirm the administrative law judge’s finding that claimant has not established that the miner’s total disability was due to pneumoconiosis at Section 718.204(c).

With respect to death causation at Section 718.205(c) in the survivor’s claim, the administrative law judge considered the medical opinions of Drs. Hnilica and Cohen, that

⁵ The administrative law judge found that Dr. Skillrud diagnosed simple pneumoconiosis, as well as [s]evere chronic obstructive pulmonary disease [COPD]/chronic smoker.” Director’s Exhibit 14. The administrative law judge, however, permissibly found that this opinion was not supportive of claimant’s burden of establishing disability causation at 20 C.F.R. §718.204(c), as Dr. Skillrud did not discuss whether the miner’s pneumoconiosis caused any disability or discuss whether the miner’s COPD was due to any cause other than smoking. Decision and Order at 10; Director’s Exhibit 14.

the miner's death was a result of coal workers' pneumoconiosis, and the contrary opinion of Dr. Askin, that pneumoconiosis played no role in the miner's death. The administrative law judge found that Dr. Hnilica concluded, in her written autopsy report, that the miner's death was "a result of his severe and chronic lung disease, related to his occupation as a coal miner[,]" and also listed coal workers' pneumoconiosis as the sole cause of death. Decision and Order at 10; Claimant's Exhibit (Survivor) 3. The administrative law judge also found, however, that Dr. Hnilica testified on deposition that the pulmonary disease that caused the miner's death might also be due to his smoking or a possible virus. *Id.* The administrative law judge, therefore, accorded little weight to Dr. Hnilica's opinion because her deposition testimony appeared to contradict the conclusions she expressed in her written autopsy report. Decision and Order at 11. The administrative law judge further found that Dr. Hnilica's autopsy report was outweighed by the more credible and contrary reviewing opinion of Dr. Askin. Likewise, because Dr. Cohen relied on the autopsy report of Dr. Hnilica, which the administrative law judge found not credible, to find that the miner's death was due to pneumoconiosis, the administrative law judge rejected Dr. Cohen's opinion on the issue of death causation.

Claimant challenges the administrative law judge's weighing of the opinions of Drs. Hnilica and Cohen, arguing that the administrative law judge mischaracterized Dr. Hnilica's opinion and also failed to adequately discuss his rationale for discrediting her opinion. Claimant also contends that the administrative law judge erred in rejecting Dr. Cohen's opinion, arguing that he failed to consider Dr. Cohen's opinion beyond the reasons he considered in discrediting it in the miner's claim. In addition, claimant contends that the administrative law judge erred in failing to consider whether the evidence established that the miner's death was due to clinical pneumoconiosis, arguing that both Drs. Hnilica and Cohen diagnosed clinical pneumoconiosis and opined that it was a cause of the miner's death, contrary to the opinions of Dr. Askin. There is merit in these contentions.

As claimant contends, the administrative law judge has not fully discussed the relevant evidence of record on the issue of death causation at Section 718.205(c). Specifically, the administrative law judge has not discussed whether the miner's clinical pneumoconiosis was a contributing factor in the miner's death. Nor has the administrative law judge considered all aspects of Section 718.205(c), as he did not consider whether the miner's pneumoconiosis hastened the miner's death pursuant to Section 718.205(c)(5). 20 C.F.R. §718.205(c)(5); *see Railey*, 972 F.2d at 183, 16 BLR at 2-128. Consequently, we vacate the administrative law judge's findings pursuant to Section 718.205(c) and remand the case for the administrative law judge to consider the evidence under each of the relevant subsections of Section 718.205(c).

Finally, claimant argues that this case should be reassigned to a different administrative law judge. We deny this request because claimant has not demonstrated

any bias or prejudice on the part of the administrative law judge. *See Cochran v. Consolidation Coal Co.*, 16 BLR 1-101 (1992).

Accordingly, the administrative law judge's Decision and Order Denying Benefits with respect to both the miner's claim and the survivor's claim is vacated and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge