BRB No. 01-0118 BLA

BEATRICE J. KRAMER (Widow of MARION W. KRAMER) Claimant-Respondent v. CONSOLIDATION COAL COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: DECISION and ORDER

Appeal of the Decision and Order Granting Benefits and Supplemental Decision and Order Awarding Attorney's Fees of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Cheryl Catherine Cowen, Waynesburg, Pennsylvania, for claimant.

William S. Mattingly (Jackson & Kelly PLLC), Morgantown, West Virginia.

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

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits and the Supplemental Decision and Order Awarding Attorney's Fees (2000-BLA-0153) of Administrative Law Judge Daniel F. Solomon 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 March 8, 1999. 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 May 24, 2000. Director's Exhibits 32, 33.

In the Decision and Order Granting Benefits, the administrative law judge accepted the parties' stipulations that the miner had at least thirty-three years of coal mine employment and that he suffered from pneumoconiosis arising out of coal mine employment. Based upon the medical evidence of record, the administrative law judge found that pneumoconiosis hastened the miner's death and therefore was a substantially contributing cause or factor leading to death, pursuant to 20 C.F.R. §718.205(c)(2). Accordingly, the administrative law judge awarded benefits. In the Supplemental Decision and Order, the administrative law judge considered and rejected employer's objections to claimant's counsel's fee petition and awarded claimant's counsel a fee of $11,032.50 for services performed, and $802.40 for costs incurred, while the case was pending before the Office of Administrative Law Judges.

On appeal, employer contends that the administrative law judge erred in his weighing of the medical evidence pursuant to 20 C.F.R. §718.205(c)(2) and substituted his own judgment for that of the medical experts. Employer also contends that the administrative law judge erred in awarding claimant's counsel an hourly rate of $150.00, and erred in approving thirty-one hours of services that employer alleges were duplicative. Claimant responds, urging affirmance of both the award of benefits and the attorney's fee, and the Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this 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 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'Keeffe 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. §718.205(a)(1)-(3); *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 pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2), (4). 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); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190, ---

BLR --- (4th Cir. 2000); *Shuff v. Cedar Coal Co*., 967 F.2d 977, 979-80, 16 BLR 2-90, 2-92-93 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993). Failure to establish any one of these elements precludes 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).

Review of the record indicates that the miner's two lifetime claims for benefits were finally denied because the medical evidence did not establish that he was totally disabled by a respiratory or pulmonary impairment. Director's Exhibits 37, 38. The evidence associated with the miner's claims included a series of uniformly non-qualifying pulmonary function and blood gas studies administered between December 28, 1981 and May 8, 1996. The last of these tests was administered approximately two-and-a-half years prior to the miner's death. *Id*.

In July of 1996, the miner was diagnosed with cancer of the colon with metastases to the liver. Director's Exhibit 30. On July 27, 1996, Dr. Michael Reilly, who is Board-certified in Surgery, performed a sigmoid colon resection and removed "a tennis ball size carcinoma." *Id*. While performing the surgery Dr. Reilly observed multiple metastatic tumors in the liver. *Id*.

In follow-up treatment notes, Dr. Reilly reported that the miner recovered well from the surgery, and was considering localized surgery and chemotherapy to treat the metastatic tumors in his liver. *Id*. On September 24, 1996, however, Dr. Reilly reported that a CT scan revealed metastases to the lungs since the surgery. Because the miner was therefore no longer a candidate for regional therapies confined to the liver, Dr. Reilly recommended systemic chemotherapy. Dr. Reilly noted that the miner would be referred to other physicians for treatment.

The record contains no further treatment records until September 15, 1998, when Dr. Reilly again saw the miner. Dr. Reilly recorded that the miner had recently experienced weight loss, malaise, and loss of strength, and was now complaining of shortness of breath. Director's Exhibit 30. On examination, the miner's liver was "large, hard, and nodular," but the miner was not jaundiced and he was alert. *Id*. Dr. Reilly noted that the miner's "biggest complaint at this point is dyspnea," which Dr. Reilly suspected was "due to the cachexia and to the pulmonary met[astases]." *Id*. Dr. Reilly prescribed home oxygen, recommended home hospice care, and arranged for a hospital bed. *Id*.

The miner died at home on October 29, 1998. Director's Exhibit 12. The death certificate, which was completed by a coroner, listed the immediate cause of death as "CA of lung with metastisis [sic]", and listed "Coal Workers' Pneumoconiosis" as a significant condition contributing to death. *Id*.

Dr. Cyril Wecht, who is Board-certified in Anatomical and Clinical Pathology, conducted an autopsy and reviewed the miner's medical records and diagnosed, *inter alia*, mucinous adenocarcinoma of the sigmoid colon, metastatic adenocarcinoma of the lungs, liver, and lymph nodes, and "Anthracosilicosis (Coal Workers' Pneumoconiosis)." Director's Exhibit 13. Dr. Wecht opined that the miner died due to adenocarcinoma of the sigmoid colon with multiple metastases, and stated that coal workers' pneumoconiosis was a substantial contributing factor in the miner's death. *Id*.

Dr. Wecht was deposed and explained how he believed that pneumoconiosis hastened death:

> [T]his man was markedly compromised in terms of respiratory function because of the tumor masses in the lungs. His respiratory capacity was severely impinged upon because functioning lung tissue was replaced by tumor masses. The presence of the pneumoconiosis added to that respiratory embarrassment. It added to the diminution of the normally functioning, anatomically normal lung tissue. Therefore, the presence of this secondary disease process, namely the pneumoconiosis, added to the cardiovascular burden, added to the ongoing presence of hypoxemia; that is to say, some diminution of oxygenation and thereby contributed to his death.

Employer's Exhibit 4 at 18. Dr. Wecht believed that although the miner "would have gone on to die unquestionably from the tumor," he would have lived longer had he not had pneumoconiosis because his non-cancerous lung tissue would have been better able to maintain normal blood gas exchange, allowing him to compensate for the respiratory burden caused by the lung tumors. Employer's Exhibit 4 at 40, 41, 46.

Claimant also submitted a report from Dr. Reilly, who reviewed the autopsy report and concluded that pneumoconiosis hastened the miner's death by causing the lung tissue that was not affected by cancer to be less capable of "maintain[ing] oxygenation and CO2 exchange" than it otherwise would have been. Director's Exhibit 14. Dr. Reilly therefore concluded that although the miner's death "was inevitable given the fact that he had the widespread metastatic cancer," pneumoconiosis "undoubtedly did hasten his death somewhat. . . ." *Id*.

Dr. Reilly was deposed and explained his view of how pneumoconiosis contributed to the miner's death:

> I think [pneumoconiosis] hastened his death in that he wasn't able to

> compensate as extensively for the metastatic pulmonary disease as someone with normal lungs would have been. . . As long as you have healthy lung tissue, you can tolerate a fair amount of tumor load in the lung before your gas exchange gets poor enough that your oxygen level goes down and you're not able to exchange the CO2 as readily as you would be able to normally. So the amount he was able to compensate for was less because of the pneumoconiosis that Dr. Wecht documented.

Claimant's Exhibit 2 at 8-9. Dr. Reilly testified that normal pulmonary function and blood gas studies done years before the miner's death did not necessarily mean that pneumoconiosis played no role in his death, because his lungs could have compensated for the pneumoconiosis until the metastatic cancer to the lungs pushed him over the "stress point" into acute deterioration. *Id*. at 17. Based on his treatment of the miner, Dr. Reilly believed that the miner had indeed crossed that "stress point":

> Based on the path[ology] report with the pulmonary METS in the lung and the shortness of breath and the home O2 that he hadn't had when I had seen him before, I feel that's a reasonable conclusion.

Id.

Employer responded with the report of the late Dr. Jerome Kleinerman, who was Board-certified in Anatomical and Clinical Pathology, and who reviewed the autopsy report and slides and the miner's medical records. Director's Exhibit 31. Dr. Kleinerman diagnosed simple coal workers' pneumoconiosis which he believed did not hasten the miner's death due to metastatic cancer in the lungs, liver, and lymph nodes. Dr. Kleinerman disagreed with Dr. Wecht's conclusion that pneumoconiosis hastened death, stating:

> The basis of my disagreement is that five series of pulmonary function studies from August 31, 1989 to April 16, 1996 all indicated that there was no evidence of clinically significant . . . lung dysfunction. . . . The arterial blood gas studies also indicate that there was no arterial hypoxemia over the same period from 1989 to 1996. Since there is considerable evidence in the scholarly literature to indicate that simple CWP does not progress after a miner leaves employment in the underground coal mines, [the miner's] lung function and arterial blood oxygen values could not have decreased sufficiently as a result of the simple CWP present in his lungs to interfere with his oxygenation nor to be a substantial contributing factor in his death.

Director's Exhibit 31 at 8-9.

Employer also submitted the medical opinion of Dr. Joseph Tomashefski, who is Board-certified in Anatomical and Clinical Pathology, and who reviewed the autopsy report and slides and the miner's medical records. Director's Exhibit 34. Dr. Tomashefski diagnosed a moderate degree of simple coal workers' pneumoconiosis, along with pleural anthracofibrosis and silicotic nodules in the lymph nodes. *Id*. Dr. Tomashefski opined that the miner's coal workers' pneumoconiosis caused "at most, mild respiratory impairment and limitation" based upon the normal values obtained on the "most recent spirometry study in 1996." Director's Exhibit 34 at 4. Dr. Tomashefski therefore concluded that coal workers' pneumoconiosis did not contribute to the miner's death due to metastatic carcinoma. *Id*.

Employer also had the autopsy report and slides and the miner's medical records reviewed by Dr. Richard Naeye, who is Board-certified in Anatomical and Clinical Pathology. Employer's Exhibit 1. Dr. Naeye diagnosed simple coal workers' pneumoconiosis which he believed did not impair the miner's lung function or hasten his death due to metastatic colon cancer. Dr. Naeye reasoned that:

> [P]ulmonary function studies conducted on this man in 1989, six years after he had quit mining coal, did not show any significant abnormalities in lung function. From this it c[a]n be concluded that overall the CWP was mild and did not cause any significant impairments in lung function because simple CWP does not advance after a miner quits the industry. Therefore, pulmonary function abnormalities which appeared later must have some other cause.

Employer's Exhibit 1 at 1. Thus, to the extent the miner had a mild impairment on 1990 and 1996 pulmonary function studies, Dr. Naeye concluded this was due to the miner's twenty pack-year history of smoking which ended in 1966, and not to pneumoconiosis. Consequently, Dr. Naeye concluded that the miner would have died at the same time and in the same way had he never mined coal. At his deposition, Dr. Naeye explained that pneumoconiosis did not hasten the miner's death "because it didn't cause any abnormalities in lung function that could be measured." Employer's Exhibit 5 at 20.

Finally, employer submitted the report of Dr. Gregory Fino, who is Board-certified in Internal Medicine and Pulmonary Disease, and who reviewed the medical evidence of record. Employer's Exhibit 3. Dr. Fino stated that the miner had pneumoconiosis, but noted that the miner's pulmonary function studies, blood gas studies, and diffusion capacity studies revealed no respiratory impairment due to

pneumoconiosis during the miner's lifetime. Dr. Fino therefore concluded that pneumoconiosis did not hasten the miner's death due to metastatic colon cancer. *Id*.

Dr. Fino testified at the hearing that there probably was a "pulmonary component" to the miner's death, but reiterated that pneumoconiosis played no role because the miner's objective tests revealed that pneumoconiosis had not affected his lung function during life. Tr. at 44-45. Dr. Fino believed that the miner's respiratory condition worsened from 1996 until his death, but concluded that this was entirely due to cancer and was unrelated to pneumoconiosis. Dr. Fino disagreed with Drs. Wecht and Reilly that pneumoconiosis hastened death because he believed that their opinions were unsupported by proof of impairment in the miner's pulmonary function and blood gas studies. Tr. 49, 56, 57.

After setting forth and discussing the medical evidence in light of the physicians' credentials and reasoning, the administrative law judge found that pneumoconiosis hastened the miner's death. Based primarily on the opinion of Dr. Fino, the administrative law judge first found that as of the time of "the Spring 1996 pulmonary function studies and blood gas studies," there did not appear to be "any functional aspect to [the miner's] pneumoconiosis." Decision and Order at 36. The administrative law judge indicated however, that "I do not accept that 1996 pulmonary function studies and blood gas studies are dispositive of the [m]iner's physical state as of September and October, 1998." *Id*. For purposes of determining whether pneumoconiosis hastened the miner's death, the administrative law judge therefore focused on the evidence of the miner's pulmonary condition near the time of his death. Decision and Order at 16, 36.

Based upon Dr. Reilly's observation of increased shortness of breath on September 15, 1998 and Dr. Reilly's prescription of home oxygen at that time, the administrative law judge found it "reasonable that hypoxemia [was] present." Decision and Order at 31. In determining whether pneumoconiosis was a factor in that hypoxemia, the administrative law judge accorded less weight to the opinions of Drs. Fino, Naeye, Kleinerman, and Tomashefski because he found that they "all affix[ed] great import" to the 1996 objective studies in order to rule out pneumoconiosis, when "the [m]iner expired more than two years" after those studies were conducted. Decision and Order at 37. In light of the progressive nature of pneumoconiosis, the administrative law judge found that their reasoning did not adequately address "the time line" of the evidence. *Id*. Additionally, the administrative law judge was troubled by Dr. Kleinerman's view that the miner's coal workers' pneumoconiosis could not have progressed after the cessation of coal mine dust exposure. Decision and Order at 25. Based upon Dr. Wecht's and Dr. Reilly's opinions, which the administrative law judge found to be documented and better

reasoned, the administrative law judge inferred that pneumoconiosis contributed to the miner's hypoxemia and hastened his death. Decision and Order 38-39.

Employer argues that the administrative law judge erred in relying on Dr. Wecht's opinion when Dr. Wecht's autopsy report does not comply with the quality standards of 20 C.F.R. §718.106. Under Section 718.106, an autopsy report must include both a gross and microscopic description of the lung. Dr. Wecht's report included both a gross and microscopic description, and the administrative law judge properly found that "[a] review of the autopsy report shows it is consistent in form with the regulation." Decision and Order at 18; *see Dillon v. Peabody Coal Co*., 11 BLR 1-113, 114-15 (1988). Accordingly, the administrative law judge did not err in accepting Dr. Wecht's report as technically reliable.

Employer contends that even if Dr. Wecht's report conforms to the quality standards, the administrative law judge should have accorded it less weight because Dr. Wecht's microscopic description is a standard description of the microscopic findings of coal workers' pneumoconiosis which Dr. Wecht uses in every case in which he diagnoses pneumoconiosis. Dr. Wecht testified that he utilizes standard language to describe the microscopic features of pneumoconiosis, because "the sizes and quantitative descriptions and qualitative appearances are set forth in the accompanying autopsy report," and because it is an easier way of "setting forth the same group of findings." Employer's Exhibit 4 at 37.

The administrative law judge considered Dr. Naeye's and Dr. Fino's critique of Dr. Wecht's methodology, but also reasonably took into account Dr. Reilly's testimony that it is medically acceptable to use standard language to describe disease processes in a medical report. Decision and Order at 20; Claimant's Exhibit 2 at 22-23. Additionally, the administrative law judge found no material differences between the competing pathologists' descriptions of the degree of pneumoconiosis present on the lung tissue slides. *See* Decision and Order at 29 ("With respect to the size and amount of the material, the reports of Drs. Kleinerman and Naeye do not vary much in description from that of Dr. Wecht."); Decision and Order at 34 ("[E]ach pathologist found a significant amount of pneumoconiosis on examining the slides."). Further, the administrative law judge found no evidence that Dr. Wecht's conclusions were not based on his own observations. Decision and Order at 20. Substantial evidence supports the administrative law judge's findings, and employer presents no basis to disturb the administrative law judge's decision not to discount Dr. Wecht's opinion. *See Mays v. Piney Mountain Coal Co*., 21 BLR 1-59, 1-64 (1997)(Dolder, J., concurring and dissenting).

Employer contends that the administrative law judge provided an invalid reason for according less weight to Dr. Kleinerman's opinion that pneumoconiosis

did not hasten the miner's death. We disagree. The administrative law judge accurately determined that Dr. Kleinerman based his opinion, in part, on the assumption that the miner's coal workers' pneumoconiosis could not have progressed because the miner was no longer exposed to coal mine dust. Director's Exhibit 31 at 8-9. The administrative law judge rationally found that Dr. Kleinerman's reasoning, while "not completely 'hostile'" to the Act, ran counter to the "assumption of progressivity that underlies much of the statutory regime." Decision and Order at 25; *see* 20 C.F.R. §718.201(c)("[P]neumoconiosis is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure."); *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151, 11 BLR 2-1, 2-9 (1987), *reh'g denied*, 484 U.S. 1047 (1988). In sum, the administrative law judge appropriately considered the progressive nature of pneumoconiosis in weighing Dr. Kleinerman's opinion. *See* 20 C.F.R. §718.201(c); *Richardson v. Director, OWCP*, 94 F.3d 164, 167-68, 21 BLR 2-373, 2-379 (4th Cir. 1996).

Employer alleges further that the administrative law judge selectively analyzed the evidence and substituted his own judgment for that of medical experts when he found that pneumoconiosis hastened the miner's death. The essence of employer's argument is that the administrative law judge did not adequately consider the views of Drs. Kleinerman, Naeye, Tomashefski, and Fino that because there was no objective test evidence of impairment due to pneumoconiosis during the miner's life, pneumoconiosis did not hasten his death.

Based on our review of the record and the administrative law judge's Decision and Order as a whole, we conclude that the administrative law judge properly weighed the medical evidence. The administrative law judge applied the proper test, which is whether pneumoconiosis hastened the miner's death in any way. *See* 20 C.F.R. §718.205(c)(4); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 757, 21 BLR 2-587, 2-592 (4th Cir. 1999). Assessing the evidence from this perspective, and taking into account the progressive nature of pneumoconiosis, the administrative law judge was not persuaded by those physicians who relied heavily on objective tests administered in 1996 or earlier to conclude that pneumoconiosis did not hasten the miner's death in October of 1998. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998)(the administrative law judge must assess the quality of a physician's reasoning); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997)(same). Based upon Dr. Reilly's treatment observations and prescription of home oxygen in September of 1998, the administrative law judge rationally concluded that hypoxemia was present by then. Acting within his discretion as fact-finder, the administrative law judge credited the unequivocal opinions of Drs. Wecht and Reilly

that pneumoconiosis contributed to the miner's hypoxemia, thereby hastening his death.

The administrative law judge is not bound to accept the opinion or theory of any medical expert, but must evaluate the evidence, weigh it, and draw his own conclusions. *Underwood v Elkay Mining Inc*., 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997). The administrative law judge did so here utilizing the proper legal standards. The medical opinions that he credited explain clearly how pneumoconiosis hastened the miner's death. *See Sparks, supra*. In reaching his decision, the administrative law judge thoroughly discussed the relative qualifications of the competing physicians and assessed the quality of their reasoning. Decision and Order at 33-39; *see Hicks*, *supra*; *Akers, supra*; *Trumbo*, 17 BLR at 1-88-89 and n.4 (1993). Substantial evidence supports the administrative law judge's findings, which are in accordance with law. Accordingly, we affirm the administrative law judge's finding that pneumoconiosis hastened the miner's death and that claimant is therefore entitled to benefits.

Employer challenges the administrative law judge's award of an attorney's fee, alleging that the hourly rate is unreasonable and that the hours claimed are excessive. The award of an attorney's fee is discretionary and will be upheld on appeal unless shown by the challenging party to be arbitrary, capricious, or an abuse of discretion. *Jones v. Badger Coal Co*., 21 BLR 1-102, 1-108 (1998)(*en banc*).

Subsequent to the issuance of the administrative law judge's Decision and Order Granting Benefits, claimant's counsel submitted a fee petition to the administrative law judge, requesting $11,032.50 for 73.55 hours of services at $150.00 per hour, plus $802.40 in expenses. Employer filed objections to the requested hourly rate and to 38.5 hours of services. Claimant replied to employer's objections. In the Supplemental Decision and Order, the administrative law judge found that claimant's counsel's customary hourly rate of $150.00 was reasonable, and found that all of the hours requested by counsel were reasonable and necessary in pursuit of benefits for claimant. *See* 20 C.F.R. §725.366(b).

Employer contends that the administrative law judge abused his discretion by going outside the record to determine whether $150.00 an hour is a reasonable rate in claimant's counsel's region. Contrary to employer's contention, however, the administrative law judge did not take judicial notice of the *Altman & Weil Survey of Law Firm Economics* to determine the local billing rates in the Pittsburgh, Pennsylvania area. *See* Supplemental Decision and Order at 5 ("I do not need to utilize the Altman and Weill statistics to reach a decision in this matter."). Rather, the administrative law judge determined that $150 an hour has been claimant's counsel's customary billing rate for the past five years, and was a reasonable rate

considering counsel's credentials and the quality of her work in this case. *See* 20 C.F.R. §725.366. We see no abuse of discretion in the administrative law judge's finding that $150.00 was a reasonable hourly rate. *See Jones, supra*.

Employer also contends that the administrative law judge abused his discretion in allowing 31 hours of services which employer alleges were excessive and duplicative. The administrative law judge considered employer's objections to the time spent, and claimant's counsel's responses thereto, and found that the hours requested for reviewing the file, preparing for the depositions of Drs. Wecht, Reilly, and Naeye, preparing a pre-hearing report, and preparing for the hearing at which Dr. Fino would testify, were necessary and reasonable considering "the nature of the case" and "the tactical position [counsel] was in at the time that the service was rendered." Supplemental Decision and Order at 4. For each of these time entries, the administrative law judge was clearly impressed by the need for claimant's counsel to adequately prepare given the extensive record in this case and the detailed medical reports in which the physicians referred to medical literature outside the record. Supplemental Decision and Order at 3-4. Based upon our review of the administrative law judge's findings, we conclude that employer has not demonstrated that the administrative law judge's award of the time entries requested was arbitrary, capricious, or an abuse of discretion. *See Jones, supra*.

Accordingly, the administrative law judge's Decision and Order Granting Benefits and Supplemental Decision and Order Awarding Attorney's Fees are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge