

BRB No. 09-0846 BLA

ANNA SENCHUR	)	
(Widow of STANLEY SENCHUR)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY	)	DATE ISSUED: 10/29/2010
	)	
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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Robert J. Bilonick (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Lindsey M. Sbrolla (Thompson, Calkins & Sutter), Pittsburgh, Pennsylvania, for employer.

Jeffrey S. Goldberg (M. Patricia Smith, Solicitor of Labor; Rae Ellen 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 McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (2009-BLA-5038) of Administrative Law Judge Daniel L. Leland rendered on a survivor's claim filed

pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act). The administrative law judge credited the miner with thirty-eight years and seven months of coal mine employment, and adjudicated this claim, filed on November 27, 2007, pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence was sufficient to establish the existence of clinical pneumoconiosis and complicated pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), and that the miner was entitled to the irrebuttable presumption of death due to pneumoconiosis under 20 C.F.R. §718.304. The administrative law judge further found that the miner's pneumoconiosis substantially contributed to his death pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's weighing of the autopsy evidence and medical opinion evidence to find complicated pneumoconiosis established at 20 C.F.R. §718.304, and his finding that the miner's death was due to clinical pneumoconiosis at 20 C.F.R. §718.205(c). Claimant<sup>1</sup> responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has declined to file a substantive brief.<sup>2</sup>

By Order dated June 29, 2010, the Board provided the parties with the opportunity to address the impact on this case, if any, of Section 1556 of Public Law No. 111-148. *Senchur v. Consolidation Coal Co.*, BRB No. 09-0846 BLA (June 29, 2010)(unpub. Order). This provision amended the Act with respect to the entitlement criteria for certain claims that were filed after January 1, 2005 and remained pending as of March 23, 2010, the effective date of the amendments. The Director has responded, noting that, if the Board affirms the administrative law judge's factual findings and the award of benefits, the recent amendment to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), will have no impact on this case.<sup>3</sup> However, the Director contends, and employer agrees,

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<sup>1</sup> Claimant is the surviving spouse of the miner, who died on April 3, 2006. Director's Exhibits 2, 13.

<sup>2</sup> We affirm, as unchallenged on appeal, the administrative law judge's finding regarding the length of the miner's coal mine employment and his finding that the weight of the evidence established the existence of simple pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §718.202(a), 718.203(b). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>3</sup> Section 411(c)(4) provides that if a miner had at least fifteen years of qualifying coal mine employment, and if the evidence establishes the presence of a totally disabling

that if the Board does not affirm the award of benefits, the case must be remanded for the administrative law judge to determine whether claimant is entitled to invocation of the rebuttable presumption of death due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) and, if so, to allow the parties to proffer additional evidence consistent with the evidentiary limitations set forth in 20 C.F.R. §725.414, or upon a showing of good cause.

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. 33 U.S.C. §921(b)(3), as incorporated 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 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 suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 718.304; *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *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. 20 C.F.R. §718.205(c)(5); *see also Lukosevich v. Director, OWCP*, 888 F.2d 1001, 1006, 13 BLR 2-100, 2-107-8 (3d Cir. 1989).<sup>4</sup>

Initially, we will address employer's contention that the administrative law judge's finding of complicated pneumoconiosis is not rational, supported by substantial evidence, or in accordance with applicable law. In this regard, employer argues that the administrative law judge failed to resolve the medical disputes and consider all of the medical evidence of record. Employer's argument has merit.

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respiratory impairment, there is a rebuttable presumption of total disability due to pneumoconiosis or, relevant to a survivor's claim, death due to pneumoconiosis. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 199 (2010)(to be codified at 30 U.S.C. §921(c)(4)).

<sup>4</sup> The law of the United States Court of Appeals for the Third Circuit is applicable, as the miner was employed in the coal mining industry in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 4.

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 suffers 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 which would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption found at Section 718.304. In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304, the administrative law judge must examine all the evidence on this issue, i.e. evidence of simple and complicated pneumoconiosis, as well as evidence of no pneumoconiosis, resolve the conflicts, and make a finding of fact. See *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991); *Truitt v. North American Coal Corp.*, 2 BLR 1-199 (1979), *aff'd sub nom. Director, OWCP v. North American Coal Corp.*, 626 F.2d 1137, 2 BLR 2-45 (3d Cir. 1980).

At Section 718.304(a) and Section 718.304(c), the administrative law judge initially determined that the sole x-ray interpretation dated September 18, 2000,<sup>5</sup> and the single CT scan interpretation of record dated November 24, 2003,<sup>6</sup> were of little probative value due to the age of the evidence. Decision and Order at 3, 7, 8.

Employer contends that the administrative law judge substituted his personal medical opinion for those of the experts when he discounted the x-ray and CT scan evidence of record. We disagree. The administrative law judge reasonably determined that this older evidence had little probative value due to the progressive nature of pneumoconiosis, as it “predated the miner’s death by several years.” Decision and Order at 8; see *Crace v. Kentland-Elkhorn Coal Corp.*, 109 F.3d 1163, 1167, 21 BLR 2-73, 2-82 (6th Cir. 1997); *Director, OWCP v. Mangifest*, 826 F.2d 1318, 1326, 10 BLR 2-220, 2-238 (3d Cir. 1987); *Workman v. Eastern Associated Coal Corp.*, 23 BLR 1-22 (2004) (*en banc*); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Because they are supported by substantial evidence, these findings are affirmed.

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<sup>5</sup> Dr. Navani, a Board-certified radiologist and B reader, interpreted the September 18, 2000, x-ray as completely negative. Employer’s Exhibit 4.

<sup>6</sup> Dr. Hayes, a Board-certified radiologist and B reader, interpreted the November 24, 2003, CT scan as showing a minimal degree of simple pneumoconiosis with no suggestion of coalescence or large opacity formation. Employer’s Exhibit 3.

At Sections 718.304(b) and (c), the administrative law judge considered the autopsy report of the prosecutors, Drs. Ashcraft and Huang, as well as the reports of Drs. Perper<sup>7</sup> and Oesterling, based on their review of pathology slides and autopsy evidence. In their autopsy report dated April 4, 2006, Drs. Ashcraft and Huang described their findings on gross examination, noting scattered macules measuring up to 0.7 centimeters involving 10% of the lung parenchyma, and multiple palpable nodules with the largest nodule measuring up to 1.0 centimeter. On microscopic examination, they noted sections showing bronchopneumonia, multiple anthracotic macules, and nodules, with the largest nodule measuring up to 1.0 centimeter, with accompanied emphysema. After examination of the heart and lungs, the doctors diagnosed acute myocardial infarction with old infarction; severe coal workers' pneumoconiosis, consistent with progressive massive fibrosis (PMF); cor pulmonale; severe atherosclerotic coronary artery disease (CAD); and acute bronchopneumonia. Director's Exhibit 14. Upon his microscopic examination of the autopsy slides, Dr. Perper noted that "some silicotic macronodules measure up to 1.0 centimeter in maximal dimension," and he also found focal fibro-anthraxis of the pleura with presence of birefringent silica; anthracotic macules; fibro-anthraxis micronodules of the mixed coal dust type; focal emphysema around the micrododules that measure up to 0.5 centimeters; moderate centrilobular emphysema; myocardial scarring; moderately severe arteriosclerosis; and an extensive area of acute bronchopneumonia. Director's Exhibit 15 at 16. Upon review of treatment records and medical reports, Dr. Perper provided a medical report in which he diagnosed moderately severe coal workers' pneumoconiosis, with nodules reaching 0.7 centimeters and associated centrilobular emphysema. Director's Exhibit 15 at 19. Dr. Perper later testified that claimant's coal workers' pneumoconiosis and associated centrilobular emphysema were quite severe and consistent with complicated coal workers' pneumoconiosis or PMF. Claimant's Exhibit 9 at 15. He stated that a 1.0 centimeter nodule would appear as 1.0 centimeter or greater on x-ray. Director's Exhibit 15 at 16; Claimant's Exhibit 9 at 30. By contrast, based upon his review of the miner's autopsy slides, Dr. Oesterling noted evidence of micronodular and macular coal workers' pneumoconiosis of moderate severity. He determined that the largest lesion he saw was not over 6.0 millimeters and did not qualify as a macronodule or complicated pneumoconiosis. He found no evidence of nodules measuring up to 1.0 centimeter, but agreed that a 1.0 centimeter nodule would appear as 1.0 centimeter on x-ray. Employer's Exhibits 1, 13. Dr. Oesterling opined that the presence of an isolated macronodule does

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<sup>7</sup> Dr. Perper considered both the clinical evidence and the tissue slides. The Board has held that where a physician reviews, not only the autopsy report and slides, but also additional medical records, and then bases his or her findings and conclusions on both the pathological and clinical evidence, the report constitutes both an autopsy report and a medical report for the purposes of the evidentiary limitations. *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229 (2007) (*en banc*).

not make the disease process severe, and that there was no evidence of PMF. He concluded that there was limited tissue involved. Employer's Exhibits 1, 11.

In considering the conflicting opinions, the administrative law judge stated:

In determining the size of the largest nodule of pneumoconiosis, I give the greatest weight to the prosectors because they actually examined the miner's lungs and palpated the nodules rather than relying solely on the autopsy slides as the other pathologists did. Both Dr. Perper and Dr. Oesterling stated that a 1.0 cm nodule would appear as a 1.0 cm opacity on x-ray and I find that the proper equivalency determination has been made.

Decision and Order at 8.

Employer contends that the administrative law judge erred in crediting the opinion of the prosectors for the reason that they palpated the nodules, and further argues that the prosectors' finding, that the largest nodule noted on autopsy, measuring 1.0 centimeter on gross examination and "up to 1.0 centimeter" on microscopic examination, is legally insufficient to invoke the presumption. Employer further asserts that the administrative law judge failed to consider the inconsistencies between Dr. Perper's findings upon review of the autopsy slides and his later testimony, and failed to consider and weigh all evidence relevant to Section 718.304(b) and (c), including claimant's treatment records. Some of employer's arguments have merit. Autopsy findings can support a determination of complicated pneumoconiosis where the miner suffered from a chronic dust disease of the lung which yielded massive lesions in the lung, or where an evidentiary basis exists for the administrative law judge to make an equivalency determination that the findings on autopsy would yield one or more large opacities greater than one centimeter in diameter on x-ray. 20 C.F.R. §718.304(b); *see Clites v. Jones & Laughlin Steel Corp.*, 663 F.2d 14, 3 BLR 2-86 (3d Cir. 1981).<sup>8</sup> In the instant case, the administrative law judge erroneously applied equivalency findings by Drs. Perper and Oesterling, that a one centimeter nodule seen on an autopsy slide would appear as one centimeter in diameter on x-ray, when the applicable regulation requires

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<sup>8</sup> In *Clites v. Jones & Laughlin Steel Corp.*, 663 F.2d 14, 3 BLR 2-86 (3d Cir. 1981), the United States Court of Appeals for the Third Circuit held that an administrative law judge had the authority and the obligation to make equivalency determinations between autopsy findings and x-ray findings when an evidentiary basis exists for doing so.

that the nodule appear *greater than* one centimeter in diameter.<sup>9</sup> See 20 C.F.R. 718.304; Decision and Order at 8. Moreover, the administrative law judge’s reason for crediting the opinion of the prosecutors over those of the other pathologists, *i.e.*, that the prosecutors viewed the body and palpated nodules on gross examination, is not valid, as no physician indicated that a nodule found on *gross* examination would appear as greater than one centimeter in diameter on x-ray, and all of the physicians reviewed the same autopsy slides on microscopic examination.<sup>10</sup> See *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229 (2007)(*en banc*); *Urgolites v. Bethenergy Mines, Inc.*, 17 BLR 1-20 (1992). The administrative law judge also did not address whether the inconsistencies between Dr. Perper’s reports and his later testimony affected the probative value of his opinion, nor did he resolve a relevant conflict in the opinions of the pathologists: namely, the prosecutors’ diagnosis of PMF, with the largest nodule measuring 1.0 centimeter on both gross and microscopic examination; Dr. Oesterling’s diagnosis of simple coal worker’s pneumoconiosis of moderate severity, with the largest micronodule measuring 6 millimeters; and Dr. Perper’s autopsy finding of moderately severe simple pneumoconiosis, with the largest nodule reaching either 7 millimeters or 1 centimeter, and his testimony that the profusion of lesions represented severe coal workers’ pneumoconiosis, consistent with complicated pneumoconiosis or PMF. Claimant’s Exhibit 9 at 34; Director’s Exhibits 14, 15; Employer’s Exhibits 1, 13.

Accordingly, we vacate the administrative law judge’s credibility determinations with regard to the autopsy evidence, and his determination that the relevant evidence, as a whole, establishes complicated pneumoconiosis pursuant to Section 718.304. On remand, the administrative law judge must reconsider the autopsy evidence, resolve the conflict in the physicians’ opinions, weigh all of the relevant evidence together pursuant to Section 718.304, and explain his credibility determinations in accordance with the mandates of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d), and 30 U.S.C. §932(a). See *Clites*, 663 F.2d at 14, 3 BLR at 2-86; *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

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<sup>9</sup> Dr. Perper, however, stated imprecisely that a 1.0 centimeter nodule would appear as 1.0 centimeter “or greater” on x-ray. Director’s Exhibit 15 at 16; Claimant’s Exhibit 9 at 30.

<sup>10</sup> Dr. Oesterling testified that a palpatory measurement is an estimate, rather than an actual measurement where the prosecutor “laid [the nodule] on a measuring surface to determine if it did indeed measure in total 1 centimeter.” Employer’s Exhibit 11 at 91.

Employer next contends that the administrative law judge erred in finding that the weight of the evidence established that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Employer's Brief at 10-18. The record consists of the death certificate,<sup>11</sup> the autopsy report of Drs. Ashcraft and Huang, and the medical opinions of Drs. Perper, Oesterling, and Renn.<sup>12</sup> Drs. Ashcraft and Huang opined that severe coal worker's [sic] pneumoconiosis with progressive massive fibrosis and acute bronchopneumonia were significant contributing factors to the miner's death, which was attributable to an acute myocardial infarction. Director's Exhibit 14. Dr. Perper opined that the miner's coal workers' pneumoconiosis was a substantial and hastening cause of the miner's death, both directly and indirectly. He stated that the miner's "pulmonary impairment associated with coal workers' pneumoconiosis probably triggered, precipitated or caused the patient [sic] prior myocardial infarction on the background of his severe arteriosclerotic heart disease," noting that the medical literature documents that chronic hypoxia associated with chronic lung disease triggers or aggravates lethal malignant arrhythmia in patients with chronic heart disease, and that the miner had both coronary arteriosclerosis and aortic stenosis. Director's Exhibit 15. By contrast, Dr. Oesterling concluded that the miner's death was "primarily cardiac in origin resulting in marked passive congestion with areas of pulmonary infarction and bronchopneumonia which produced hypoxemia leading to further progressive failure of the left ventricle," and also stated that "these processes are unrelated to the limited structural change present" due to the miner's "coalworkers' disease." Employer's Exhibits 1, 11. Similarly, Dr. Renn opined that coal workers' pneumoconiosis was neither a cause of, nor a contributing factor to, nor a hastening factor in, the miner's demise, which occurred when, and in the manner it would have, whether or not he had ever been exposed to coal dust. Employer's Exhibits 2, 12.

At Section 718.205(c), the administrative law judge accorded no weight to the death certificate, but gave great weight to the opinions of Drs. Ashcraft, Huang and Perper, and less weight to the contrary opinions of Drs. Oesterling and Renn. The administrative law judge found the opinion of Dr. Renn, a pulmonologist, to be poorly reasoned, as he relied on outdated pulmonary function and blood gas studies, and the

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<sup>11</sup> The death certificate was signed by Dr. Kevin Wong, who listed the immediate cause of death as acute myocardial infarction, with cor pulmonale and pneumoconiosis as underlying causes. Director's Exhibit 13.

<sup>12</sup> In preparing their reports, Drs. Perper and Renn reviewed medical reports that are not a part of the record. Director's Exhibit 15; Employer's Exhibit 2; *See Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-240-242 (2007)(*en banc*); *Harris v. Old Ben Coal Co.*, 23 BLR 1-98 (2006)(*en banc*)(J. McGranery and J. Hall, concurring and dissenting).

administrative law judge concluded that pathologists have better training and knowledge to determine if pneumoconiosis is a substantially contributing cause of death than a pulmonologist “who merely reviews the miner’s medical records.” Decision and Order at 7-8. The administrative law judge further determined that Dr. Perper had an advantage over Dr. Oesterling, because Dr. Oesterling merely reviewed Dr. Perper’s summary of the miner’s hospital and treatment records, but did not view the original records, and he “minimized the degree of the miner’s pneumoconiosis.” The administrative law judge therefore found that “a preponderance of the pathological evidence supports a finding that the miner’s pneumoconiosis was a substantially contributing cause of his death.” Decision and Order at 7-8.

Employer argues that the administrative law judge erred in crediting the opinions of Drs. Ashcraft and Huang, the prosecutors, as well as that of Dr. Perper, over the contrary opinion of Dr. Oesterling, to find that the miner’s pneumoconiosis substantially contributed to his death. In this regard, employer asserts that the administrative law judge failed to consider and weigh all record evidence relevant to the severity of the miner’s simple, clinical pneumoconiosis to resolve the factual disputes in the physicians’ opinions, and accordingly, failed to comply with the requirements of the APA. Employer further asserts that the administrative law judge erred in crediting Dr. Perper’s opinion on the ground that the doctor reviewed the miner’s medical history, when, as it contends, the medical records contradict many of Dr. Perper’s statements. Employer’s arguments have merit. In weighing the conflicting medical evidence at Section 718.205(c), the administrative law judge credited Dr. Perper’s opinion because he “thoroughly reviewed the miner’s medical history.” Decision and Order at 8. However, the administrative law judge did not discuss the contents of the treatment records or adequately explain why he found that they supported Dr. Perper’s opinion, that pneumoconiosis caused, contributed to, or hastened the miner’s death. See *Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-215 (3d Cir. 1997); *Wojtowicz*, 12 BLR at 1-165; Director’s Exhibit 15; Claimant’s Exhibits 1-9; Employer’s Exhibits 8-10.

Employer further contends that because Dr. Oesterling provided an autopsy report and not a medical report, the administrative law judge erred in discounting the doctor’s opinion for failure to review the miner’s medical records, particularly since the administrative law judge did not hold Drs. Ashcraft and Huang, the autopsy prosecutors, to the same standard. Employer also maintains that the administrative law judge failed to explain how Dr. Oesterling “minimized” the degree of coal workers’ pneumoconiosis in his opinion. We agree. After correctly noting that all of the pathologists agreed that the miner’s severe cardiac disease was the cause of his death, the administrative law judge went on to state that “only Dr. Oesterling minimized the degree of the miner’s pneumoconiosis and determined that it was too limited to have caused or contributed to his death.” Decision and Order at 8. Dr. Oesterling stated that he disagreed with the prosecutors’ diagnosis of progressive massive fibrosis, but that he and Dr. Perper “do not

disagree markedly except for the impact of this coal workers' disease." Employer's Exhibit 1. Thus, the administrative law judge did not fully explain why he discounted Dr. Oesterling's opinion. Moreover, an autopsy opinion by a physician other than the autopsy prosector is in substantial compliance with 20 C.F.R. §718.106 if it is based exclusively on the microscopic tissue samples. 64 Fed. Reg. 54978 (Oct. 8, 1999); 65 Fed. Reg. 79936 (Dec. 20, 2000); *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229 (2007) (*en banc*).

Finally, employer argues that the administrative law judge erred in discounting the opinion of Dr. Renn on the ground that he is a pulmonologist rather than a pathologist, and in finding that Dr. Renn's opinion was poorly reasoned. The administrative law judge determined that Dr. Renn's opinion was "poorly reasoned" because "he relied on objective testing that took place more than five and one half years before the miner's death to find that the miner did not have a pulmonary impairment or abnormal gas exchange," noting that, because pneumoconiosis is a progressive disease, "the results of these [studies] have limited probative value." Decision and Order at 8. The Third Circuit Court of Appeals has held that lifetime objective studies with results within normal limits are not necessarily conclusive evidence that a miner's pneumoconiosis could not have contributed in any degree to his pulmonary burdens and consequently hastened his death. *See Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 22 BLR 2-467 (3d Cir. 2002). However, because Dr. Renn based his opinion on the miner's treatment and hospital records through the time of his death, in addition to the outdated objective test results, the administrative law judge, absent a proper analysis of the conflicting medical opinions of record, has failed to provide a sufficient rationale for discrediting the opinion of Dr. Renn. *See Wojtowicz*, 12 BLR at 1-165.

In view of the foregoing, we vacate the administrative law judge's finding that the evidence established that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c), and remand the case for further consideration of the evidence in accordance with the APA. *See also Soubik v. Director, OWCP*, 366 F.3d 226, 23 BLR 2-82 (3d Cir. 2004); *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 22 BLR 2-467 (3d Cir. 2002); *Balsavage v. Director, OWCP*, 295 F.3d 390, 22 BLR 2-386 (3d Cir. 2002).

On remand, the administrative law judge must initially consider whether the miner is entitled to invocation of the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4). If the administrative law judge determines that the presumption is applicable to this claim, he must allow all parties the opportunity to submit evidence in compliance with the evidentiary limitations at 20 C.F.R. §725.414. If evidence exceeding those limitations is offered, it must be justified by a showing of good cause. 20 C.F.R. §725.456(b)(1).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge