

BRB No. 99-0171 BLA

VIRGINIA A. PARNELL	)	
(Widow of SAMUEL PARNELL)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED:
U.S. STEEL MINING COMPANY	)	
	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Party-in-Interest	)	

Appeal of the Supplemental Decision and Order on Remand of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Susan Foster Blank, Masontown, Pennsylvania, for claimant.

D. Scott Newman (Burns, White & Hickton), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order on Remand (97-BLA-0054) of Administrative Law Judge Richard A. Morgan awarding benefits on a 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). This case is before the Board for the second time. Initially, the administrative law judge accepted the parties' stipulation to thirty-eight years of coal mine employment and found that

although the x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), the medical opinion evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b). The administrative law judge further found that the medical opinions established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, he awarded benefits.

On appeal, the Board vacated the award and remanded the case for the administrative law judge to set forth his basis for determining that the medical reports he relied upon to find that the miner had pneumoconiosis which hastened his death were documented and reasoned medical opinions. *Parnell v. U.S. Steel Mining Co.*, BRB No. 97-1548 BLA (Aug. 5, 1998)(unpub.). On remand, the administrative law judge found that the same medical reports rested upon adequate documentation to constitute documented and reasoned diagnoses of pneumoconiosis pursuant to Section 718.202(a)(4), and he again credited a treating physician's opinion to find that pneumoconiosis was a substantially contributing cause of the miner's death due to a cardiac arrhythmia pursuant to Section 718.205(c)(2).

On appeal, employer contends that the administrative law judge failed to comply with the Board's remand instructions and relied upon undocumented, unreasoned medical opinions to find the existence of pneumoconiosis established pursuant to Section 718.202(a)(4). Employer additionally asserts that the medical opinion credited by the administrative law judge at Section 718.205(c)(2) is insufficient to establish any link between pneumoconiosis and the miner's death. Claimant has not responded, 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

A claimant becomes entitled to survivor's benefits by establishing that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(a). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2), (4). The United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it actually hastens

the miner's death. *Lango v. Director, OWCP*, 104 F.3d 573, 576, 21 BLR 2-12, 2-18 (3d Cir. 1997); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 1006, 13 BLR 2-100, 2-108 (3d Cir. 1989).

The threshold issue in a survivor's claim is whether the miner had pneumoconiosis as defined by the Act and regulations. See 30 U.S.C. §902(b); 20 C.F.R. §718.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88 (1993). Although Section 718.202(a) provides four distinct methods of establishing pneumoconiosis, “all types of relevant evidence must be weighed together to determine whether the [miner] suffer[ed] from the disease.” *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 25, 21 BLR 2-104, 2-111 (3d Cir. 1997). The relevant evidence in this record includes multiple hospitalization records containing x-ray readings, a CT scan reading, and examination and medical treatment reports. The record also contains consultation reports based on reviews of the miner's medical records.

Pursuant to Section 718.202(a)(1), the administrative law judge in his first decision found the weight of the x-ray readings considered in light of the readers' radiological credentials to be negative for pneumoconiosis. Decision and Order at 5-10, 24-25; see *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 310 n.3, 20 BLR 2-76, 2-280 n.3 (3d Cir. 1995). Additionally, the administrative law judge considered a July 10, 1995 CT scan report which did not diagnose pneumoconiosis. Decision and Order at 7; Director's Exhibits 8, 22. There was no biopsy or autopsy evidence. See 20 C.F.R. §718.202(a)(2).

On remand, pursuant to Section 718.202(a)(4), the administrative law judge considered the opinions of Drs. Powell, DiLeo, Bennett, and Fino.<sup>1</sup> Drs. Powell and DiLeo, the miner's treating physicians during his multiple hospitalizations for respiratory and cardiac problems, listed diagnoses of asthmatic bronchitis, chronic obstructive pulmonary disease, and coal workers' pneumoconiosis in their treatment records. Director's Exhibits 8, 20, 22. Additionally, Dr. Powell prepared two reports in which he discussed his treatment of the miner and reviewed the medical records leading to his diagnoses. Director's Exhibit 10; Claimant's Exhibit 1. Dr. Powell

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<sup>1</sup> The record indicates that Drs. Bennett and Fino are Board-certified in Internal Medicine and Pulmonary Disease. Employer's Exhibits 1, 2. The administrative law judge properly took official notice of the credentials of Drs. Powell and DiLeo as listed in the *Directory of Physicians in the United States*, (35th ed. 1996). See *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135, 1-138-40 (1990). Dr. Powell is Board-certified in Internal Medicine and Pulmonary Disease, and Dr. DiLeo is Board-certified in Internal Medicine and Cardiovascular Disease.

opined that the etiology of the miner's lung disease was “multifactorial and include[d] occupational exposure to coal dust and tobacco abuse.” Claimant's Exhibit 1 at 4. By contrast, Drs. Bennett and Fino concluded, based on their review of the medical evidence, that the miner did not have pneumoconiosis and that his respiratory and pulmonary problems resulted from cigarette smoking. Employer's Exhibit 2.

The administrative law judge cited Dr. Powell's and Dr. DiLeo's reliance upon history, examinations, chest x-rays, and other objective test results as a basis for finding their opinions sufficiently documented and reasoned. Supplemental Decision and Order on Remand at 5-6. The administrative law judge credited their opinions over those of Drs. Bennett and Fino because they examined and treated the miner, and because the administrative law judge was more persuaded by Dr. Powell's opinion. Supplemental Decision and Order on Remand at 7.

Employer contends that the administrative law judge failed to identify pursuant to Section 718.202(a)(4) any specific objective evidence or medical explanation that supports Dr. Powell's or Dr. DiLeo's diagnoses. Employer's Brief at 4-7. Although the administrative law judge did identify some items of medical evidence, our review of this issue is hampered by the administrative law judge's failure to weigh together all of the types of evidence relevant to the existence of pneumoconiosis. See *Williams, supra*. Without such a weighing, resolution of the documentation and reasoning of the medical opinions is difficult. For example, in citing Dr. Powell's and Dr. DiLeo's reliance upon certain chest x-ray readings as an important objective factor, the administrative law judge did not explain how the chest x-rays provided objective support for their diagnoses in light of his earlier finding that the chest x-rays did not establish pneumoconiosis. Additionally, the administrative law judge did not indicate how much weight, if any, he accorded to the CT scan reading, which Dr. Bennett indicated did not show changes consistent with pneumoconiosis. Employer's Exhibit 2. Therefore, we must vacate the administrative law judge's finding that the medical opinion evidence established the existence of pneumoconiosis based on his findings at Section 718.202(a)(4), and remand the case to the administrative law judge for further consideration of all relevant evidence together under Section 718.202(a) consistent with *Williams*.<sup>2</sup> Because we must vacate the administrative law judge's finding pursuant to Section 718.202(a)(4), and the administrative law judge relied primarily upon Dr. Powell's opinion at Sections 718.203(b) and 718.205(c)(2), we must also vacate these findings.

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<sup>2</sup> On remand, the CT scan reading should be considered separately from the conventional chest x-rays. See *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991).

Pursuant to Section 718.205(c)(2), employer contends that Dr. Powell's opinion is legally insufficient to establish that pneumoconiosis hastened the miner's death because Dr. Powell did not provide a reasoned basis for concluding that the miner's death was related to pneumoconiosis. Employer's Brief at 8-11. Dr. Powell completed the miner's death certificate, listing as the immediate cause of death cardiac arrhythmia due to cardiomyopathy. Director's Exhibit 8. Dr. Powell listed chronic obstructive lung disease and Coal Workers' Pneumoconiosis as significant conditions contributing to death. *Id.* In finding that claimant established that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, the administrative law judge cited the death certificate and Dr. Powell's statement in his report that cardiac “[a]rrhythmias are . . . quite common in patients with severe obstructive lung disease which may include Coal Workers' Pneumoconiosis.” Claimant's Exhibit 1 at 5.

Dr. Powell provided further discussion of the death causation issue in his report, which the administrative law judge did not include in his analysis at Section 718.250(c)(2).<sup>3</sup> Claimant's Exhibit 1 at 5. Based upon our review of Dr. Powell's entire discussion, we decline to hold as a matter of law that Dr. Powell's opinion is insufficient to establish that pneumoconiosis hastened the miner's death. However, if the administrative law judge on remand again credits Dr. Powell's opinion, the administrative law judge must explain specifically what aspects of Dr. Powell's explanation take his opinion beyond a mere general hypothesis and make it a specific statement that this particular miner's pneumoconiosis actually hastened his death. See *Lango, supra*; *Lukosevicz, supra*; *Knizer v. Bethlehem Mines Corp.*, 8

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<sup>3</sup> Dr. Powell additionally stated that “underlying lung disease may be responsible for a nonspecific cardiomyopathy and certainly [the miner's] underlying lung disease was of sufficient severity that could account for cardiomyopathy. Arrhythmias are well known to occur in the presence of a cardiomyopathy of any etiology.” Claimant's Exhibit 1 at 5. Dr. Powell also noted that it was unlikely that coronary artery disease caused the cardiomyopathy or that the miner died from a pulmonary embolism, and concluded that pneumoconiosis “was a substantially contributing factor resulting in the [miner's] overall deterioration and death.” *Id.*

BLR 1-5, 1-7 (1985).

Accordingly, the administrative law judge's Supplemental Decision and Order on Remand awarding benefits is vacated and the case is remanded to the administrative law judge 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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JAMES F. BROWN  
Administrative Appeals Judge