

BRB No. 99-0793 BLA

AUDREY MOSHOLDER)	
(Widow of RICHARD A. MOSHOLDER))	
)	
Claimant-Petitioner))
)	
v.)	
)	
GATEWAY COAL COMPANY)	DATE ISSUED:
)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Daniel J. Iler (Richman & Smith, LLP), Washington, Pennsylvania, for claimant.

Raymond F. Keisling (Keisling and Associates, P.C.), Carnegie, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (98-BLA-1139 and 98-BLA-0705) of Administrative Law Judge Richard A. Morgan on a duplicate miner's claim and 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.*¹ The administrative law judge found that the newly submitted evidence supported employer's stipulation that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and that the newly submitted evidence established that the pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. The administrative law judge also determined, however, that the newly submitted evidence was insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). The administrative law judge further found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits with respect to both claims.

On appeal, claimant initially challenges the administrative law judge's determination that the record contains no evidence that the miner suffered from cor pulmonale with right sided congestive heart failure pursuant to Section

¹Claimant is Audrey Mosholder, widow of the miner, Richard Mosholder, who died on January 5, 1998. Director's Exhibit 37. The miner filed an application for benefits with the Department of Labor on June 29, 1994. Director's Exhibit 32. This claim was denied by Administrative Law Judge Thomas M. Burke in a Decision and Order dated May 30, 1996. *Id.* No further action was taken on this claim. The miner then filed the instant duplicate claim on June 3, 1997. Director's Exhibit 1. Claimant filed a survivor's claim on January 12, 1998. Director's Exhibit 35.

718.204(c)(3). Claimant also challenges the administrative law judge's determination that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Employer, in response, asserts that the administrative law judge's findings that the evidence fails to establish total respiratory disability and death due to pneumoconiosis are supported by substantial evidence, and accordingly, urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter, indicating that he will not respond to the instant appeal.²

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 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).

Pursuant to Section 718.204(c)(3), claimant asserts that the administrative law judge erred in failing to determine that Dr. Wecht's deposition testimony is sufficient to establish that claimant suffers from cor pulmonale with right sided congestive heart failure. The administrative law judge stated that there is no evidence relevant to Section 718.204(c)(3) and cited *Newell v. Director, OWCP*, 13 BLR 1-37 (1989), in support of the premise that there is a difference between a diagnosis of cor pulmonale and a diagnosis of cor pulmonale with right sided

²We affirm, as unchallenged on appeal, the administrative law judge's findings of 35 years of qualifying coal mine employment, that employer is the putative responsible operator, his findings regarding augmentation, that the newly submitted evidence establishes the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a) and 718.203, and that the newly submitted evidence fails to establish total respiratory disability pursuant to Section 718.204(c)(1), (c)(2) and (c)(4). See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

congestive heart failure as is required by the regulations. Decision and Order at 15 n.10.

Although the administrative law judge is correct in indicating that pursuant to Section 718.204(c)(3), a physician must set forth more than a diagnosis of mere cor pulmonale, the administrative law judge did not set forth findings establishing that he fully considered whether Dr. Wecht's statements contained the requisite diagnosis of right sided congestive heart failure. Cor pulmonale is defined as heart disease due to pulmonary hypertension secondary to the lung, or its blood vessels. *Stedman's Medical Dictionary* at 392 (26th ed. 1995); *Dorland's Illustrated Medical Dictionary* at 380 (27th ed. 1988). When the pulmonary hypertension is severe, cor pulmonale causes hypertrophy of the right ventricle and right sided cardiac failure.³ *Id.* Congestive heart failure is a clinical syndrome characterized by breathlessness and abnormal sodium and water retention, resulting in the accumulation of fluids in various tissues. The congestion may occur in the lungs or peripheral circulation, or in both, depending upon whether the heart failure is right sided, left sided, or general. *Id.* at 737. In *Newell*, the Board held that a physician's diagnosis of right ventricular failure in addition to cor pulmonale may satisfy the terms of Section 718.204(c)(3). *Newell, supra*, 13 BLR at 1-39.

³Hypertrophy is the enlargement or overgrowth of an organ or part of an organ due to an increase in the size of its constituent cells. *Dorland's Illustrated Medical Dictionary* at 800 (27th ed. 1988).

In the present case, Dr. Wecht diagnosed cor pulmonale without expressly indicating that claimant had right sided congestive heart failure. Claimant's Exhibit 2 at 19, 22-27. Dr. Wecht nevertheless stated that the autopsy findings supported a determination that the miner had "about a 50 percent increase in the thickness of the right side and maybe about 1/6, or 15 percent, increased thickness in the left side." *Id.* at 23. Dr. Wecht also specifically diagnosed right ventricular hypertrophy and stated that "the right ventricle shows disproportionately greater enlargement" than the left ventricle. *Id.* at 24. Inasmuch as the administrative law judge did not set forth this evidence or the rationale for his apparent determination that Dr. Wecht's statements do not constitute a diagnosis of cor pulmonale with right sided congestive heart failure, we vacate the administrative law judge's finding under Section 718.204(c)(3) and remand the case to the administrative law judge for reconsideration of this issue. See *Tackett v. Director, OWCP*, 7 BLR 1-703(1985); *Ridings v. C & C Coal Co.*, 6 BLR 1-227 (1983). On remand, the administrative law judge may decide to reopen the record for the admission of evidence clarifying the significance of Dr. Wecht's statements regarding the presence of right ventricular hypertrophy in addition to cor pulmonale.⁴ 20 C.F.R. §725.456(e).

⁴Further, although not raised by any party, in order to avoid repetition of any error on remand, we note that Dr. Rozin also diagnosed cor pulmonale and noted that the "right coronary artery shows moderate anthracosilicosis with impingement of the lumen ranging from 25-50% in focal areas." Director's Exhibit 42. On remand the administrative law judge must address the relevance of this evidence when reconsidering his finding pursuant to 20 C.F.R. §718.204(c)(3).

Regarding the survivor's claim, claimant also contends that the administrative law judge erred in finding, pursuant to Section 718.205(c), that Dr. Wecht's opinion was not sufficient to establish that the miner's death was due to pneumoconiosis.⁵ The administrative law judge discounted Dr. Wecht's opinion because he found that:

Dr. Wecht's only explanation for his conclusion that pneumoconiosis was a substantial contributing factor to the miner's death was that the [coal workers' pneumoconiosis] caused an extra strain to be placed on the miner's already diseased heart. This statement is not supported by the [pulmonary function test] and [arterial blood gas] results which evidence no pulmonary impairment.

Decision and Order at 19. Claimant alleges that the administrative law judge's finding is in error as the record contains two blood gas studies that produced qualifying values. We reject claimant's contention as the administrative law judge acted within his discretion in according greatest weight to the most recent blood gas study of record which produced nonqualifying results. Decision and Order at 15; Director's Exhibits 16, 45; see *Schetroma v. Director, OWCP*, 18 BLR 1-17 (1993). Thus, the administrative law judge properly determined that the blood gas studies of record do not support a finding that the miner was suffering from a totally disabling pulmonary impairment which may have hastened his death. However, inasmuch as the administrative law judge's findings on remand regarding Dr. Wecht's and Dr. Rozin's diagnoses of cor pulmonale could alter the

⁵As this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, the administrative law judge applied the appropriate standard, as set forth in *Lukosevicz v. Director, OWCP*, 888 F. 2d 1001, 13 BLR 2-10 (3d Cir. 1989). Decision and Order at 17. In *Lukosevicz*, the court held that a medical opinion in which the physician acknowledged that pneumoconiosis shortened the miner's life, albeit briefly, could be sufficient to establish that pneumoconiosis was a substantially contributing cause of the miner's demise under Section 718.205(c)(2).

administrative law judge's conclusion under Section 718.205(c), we vacate the administrative law judge's finding that claimant did not establish that pneumoconiosis caused or contributed to the miner's death. On remand, the administrative law judge must reconsider Section 718.205(c) in light of his findings under Section 718.204(c)(3).

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is affirmed in part, vacated in part and remanded for further proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge