

BRB No. 04-0162 BLA

DOROTHY M. CORNELIUS)	
(Widow of CLYDE R. CORNELIUS))	
)	
Claimant-Respondent)	
)	
v.)	
)	
PITTSBURG & MIDWAY COAL MINING)	DATE ISSUED: 09/30/2004
COMPANY)	
)	
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 of Robert L. Lesnick, Administrative Law Judge, United States Department of Labor.

Jonathan C. Sapp (The Sapp Law Firm, L.L.C.), Jasper, Alabama, for claimant.

John W. Hargrove and T. Matthew Miller (Bradley, Arant, Rose & White LLP), Birmingham, Alabama, for employer.

Sarah M. Hurley (Howard Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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:

Employer appeals the Decision and Order (03-BLA-5015) of Administrative Law Judge Robert J. Lesnick 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 involves a survivor's claim filed on May 17, 2001.¹ After finding that the evidence was sufficient to establish the existence of simple pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), the administrative law judge found that the evidence was also sufficient to establish the existence of complicated pneumoconiosis, thereby enabling claimant to establish entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. Accordingly, the administrative law judge awarded benefits. On appeal, employer argues that the administrative law judge erred in finding the evidence sufficient to establish the existence of complicated pneumoconiosis pursuant to Section 718.304. Claimant² and the Director, Office of Workers' Compensation Programs, respond in support of the administrative law judge's award of benefits.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

Because this survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).³ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

¹ The miner filed a claim for benefits on January 21, 1997. Director's Exhibit 1. The district director denied benefits on April 7, 1997. *Id.* There is no indication that the miner took any further action in regard to his 1997 claim.

² Claimant is the surviving spouse of the deceased miner who died on May 7, 1999. Director's Exhibit 10.

³ Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.

Employer contends that the administrative law judge erred in finding that claimant was entitled to the irrebuttable presumption set out at 20 C.F.R. §718.304. Section 718.304 provides that there is an irrebuttable presumption that a miner's death was due to pneumoconiosis if (a) an x-ray of the miner's lungs shows an opacity greater than one centimeter in diameter; (b) a biopsy or autopsy shows massive lesions in the lung; or (c) when diagnosed by other means the condition could reasonably be expected to reveal a result equivalent to (a) or (b). *See* 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 20 C.F.R. §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) (*en banc*); *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).

Employer contends that the administrative law judge erred in finding the autopsy evidence sufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. At the outset, we note that the basis for the administrative law judge's finding of complicated pneumoconiosis is not clear. Specifically, it is not clear whether the administrative law judge found the autopsy evidence sufficient to support a finding of "massive lesions" pursuant to 20 C.F.R. §718.304(b) or whether he rendered an equivalency determination pursuant to 20 C.F.R. §718.304(c), finding that the evidence was sufficient to establish that the nodules found at autopsy would, if viewed on a chest x-ray, reveal one or more large opacities (greater than 1 centimeter in diameter). Consequently, the administrative law judge's analysis of whether the evidence is sufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304 does not comply with the requirements of the Administrative Procedure Act (APA), specifically 5 U.S.C. §557(c)(3)(A), which provides that every adjudicatory decision must be accompanied by a statement of findings of fact and conclusions of law and the basis therefor on all material issues of fact, law or discretion presented in the record. 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 Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Consequently, we vacate the administrative law judge's finding pursuant to 20 C.F.R. §718.304 and remand the case to the administrative law judge for further consideration.

In regard to the evidence, employer argues that Dr. Guerry-Force's opinion is insufficient to support a finding of "massive lesions" pursuant to 20 C.F.R. §718.304(b).

20 C.F.R. §718.205(c).

Autopsy findings can support a finding of complicated pneumoconiosis where they establish the existence of “massive lesions.” See 20 C.F.R. §718.304(b); *Gruller v. Bethlehem Mines, Inc.*, 16 BLR 1-3 (1991); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Lohr v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-1264 (1984). Employer accurately notes that Dr. Guerry-Force did not specifically diagnose “massive lesions.” However, the administrative law judge, as fact-finder, must determine whether a physician has adequately described the condition comprehended by the regulatory term, “massive lesions.” See *Gruller v. Bethlehem Mines, Inc.*, 16 BLR 1-3 (1991).⁴ Thus, the administrative law judge, on remand, must determine whether the deposition and clinical findings of Dr. Guerry-Force are sufficient to establish the existence of “massive lesions.” If so, the administrative law judge must address all of the other relevant evidence regarding the issue of “massive lesions.”

Employer also contends that Dr. Guerry-Force’s findings and testimony do not permit the administrative law judge to make an equivalency determination pursuant to 20 C.F.R. §718.304(c).⁵ Dr. Guerry-Force diagnosed “[m]ultiple, widespread fibroanthracotic nodules in both lungs, measuring up to 1.2 cm.” Director’s Exhibit 11. Although Dr. Guerry-Force did not explicitly indicate that these lesions would be viewed on a chest x-ray as large opacities (greater than 1 centimeter in diameter), Dr. Guerry-Force, during her deposition, stated that:

[T]he definitions of the standards and the extent in [the miner] of the process was such that the gross examination of the lung revealed a marked degree of simple pneumoconiosis and areas of -- larger areas of fibrosis that were one centimeter or greater in dimension, and that correlates with the ILO pulmonary lung classification for complicated, the larger nodules.

Director’s Exhibit 11 at 10-11.

⁴ In *Gruller*, the autopsy prosector diagnosed complicated pneumoconiosis and described the lungs, in part, as revealing “both macular and nodular pneumoconiosis. These lesions are large, firm and black. They vary in size up to 1.0 cm. in diameter...” *Gruller v. Bethlehem Mines, Inc.*, 16 BLR 1-3, 1-5 (1991). The Board affirmed the administrative law judge’s finding that the autopsy prosector’s findings were sufficient to establish the existence of “massive lesions” pursuant to 20 C.F.R. §718.304(b). *Id.*

⁵ In a case arising within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, the Board recently held that an equivalency finding by an administrative law judge was not compromised by his additional findings that the x-ray evidence and the autopsy evidence were insufficient to establish invocation of the interim presumption pursuant to 20 C.F.R. §718.304. See *Braenovich v. Cannelton Industries, Inc.*, 22 BLR 1-236 (2003).

Dr. Guerry-Force opined that there was a correlation between the nodules and opacities on x-rays. *See* Director's Exhibit 11 at 12. Consequently, the administrative law judge, on remand must address whether Dr. Guerry-Force's clinical findings and deposition testimony provide a sufficient basis upon which to base an equivalency determination pursuant to 20 C.F.R. §718.304(c). If so, the administrative law judge must also consider and address all other relevant evidence regarding this issue.

If the administrative law judge holds that the presumption set forth at 20 C.F.R. §718.304 is not applicable, he must address whether the evidence is sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

Accordingly, the administrative law judge's Decision and Order awarding benefits is vacated and the case is remanded for further consideration 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