

BRB No. 05-0197 BLA

TRULA M. EDWARDS	)	
(Widow of BILLY J. EDWARDS)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 09/30/2005
	)	
GRACE COAL CORPORATION	)	
	)	
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 Granting Motion for Modification and Awarding Benefits of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Granting Motion for Modification and Awarding Benefits (03-BLA-6619) of Administrative Law Judge Mollie W. Neal 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). The administrative law judge indicated that this case involves a request for modification of

the district director's denial of claimant's 2001 survivor's claim.<sup>1</sup> The administrative law judge accepted employer's concessions that the miner suffered from pneumoconiosis at the time of his death, that the miner had 17.297 years of coal mine employment, and that Grace Coal Corporation is the properly named responsible operator. Decision and Order at 3, n.3; Hearing Transcript at 6-9. Additionally, the administrative law judge found that the claim was timely filed and that claimant is the miner's eligible survivor. Decision and Order at 5-6. Addressing the merits of the survivor's claim, the administrative law judge set forth the relevant evidence and found that it was sufficient to establish that pneumoconiosis contributed to the miner's death pursuant to Section 718.205(c). Decision and Order at 7. Accordingly, the administrative law judge awarded benefits, commencing as of August 1, 2001.

On appeal, employer challenges the administrative law judge's award of benefits, contending that the administrative law judge failed to properly apply the requirements for modification at 20 C.F.R. §725.310. Employer also contends that the administrative law judge erred in her weighing of the medical opinions of Drs. Robinette and Naeye. Lastly, employer contends that the administrative law judge erred in failing to consider the evidence from the miner's lifetime claims. Claimant has not responded. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not submit a response in this appeal.<sup>2</sup>

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<sup>1</sup> Claimant is the widow of the miner, Billy J. Edwards, who died on March 28, 2001. During his lifetime, the miner had filed two applications for benefits. Both claims were denied and are not herein at issue. Director's Exhibits 1, 2. Claimant filed her application for survivor's benefits on Aug. 1, 2001, which was denied by the district director on June 13, 2002. Director's Exhibits 3, 23. On July 17, 2002, claimant requested that this claim be withdrawn, which was granted by the district director on July 23, 2002. Director's Exhibits 26, 27. Claimant filed a second application for benefits on January 13, 2003. Director's Exhibit 29. By letter dated April 17, 2003, the district director rescinded the Order of Withdrawal and stated that claimant's prior claim remains active and that her 2003 application would be treated as a request for modification. Director's Exhibit 33. Thereafter, on May 21, 2003, the district director denied claimant's request for modification. Director's Exhibit 40. Claimant then requested a hearing and the case was transferred to the Office of Administrative Law Judges. Director's Exhibits 43, 46.

<sup>2</sup> The parties do not challenge the administrative law judge's decision to credit the miner with 17.297 years of coal mine employment, her finding that the claim was timely filed, that Trula Edwards is the miner's dependent, and her acceptance of employer's concession that it is the properly designated responsible operator and that the existence of

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).

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, 1-87-88 (1993). 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)-(c)(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, 22 BLR 2-251, 2-259 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 979-80, 16 BLR 2-90, 2-92-93 (4th Cir. 1992). 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).

With regard to employer's contention that the administrative law judge failed to properly apply the regulation regarding modification pursuant to Section 725.310, we initially note that it was unnecessary for the administrative law judge to consider whether the evidence was sufficient to establish a basis for modification of the district director's denial of claimant's claim. In interpreting 20 C.F.R. §725.310 (2000),<sup>3</sup> the Board has held that an administrative law judge is not required to make a preliminary determination regarding whether a claimant has established a basis for modification of the district director's denial of benefits before reaching the merits of entitlement. Rather, the Board has recognized that such a determination is subsumed into the administrative law judge's decision on the merits. The Board has held that an administrative law judge is not constrained by any rigid procedural process in adjudicating claims in which modification

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pneumoconiosis was established. These findings are therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>3</sup> Because claimant filed her claim after January 19, 2001, revised Section 725.310 is applicable. We note, however, that the Board's holdings regarding the effect of a claimant's request for modification of a district director's denial of benefits set out in *Motichak v. Beth Energy Mines, Inc.*, 17 BLR 1-14 (1992) and *Kott v. Director, OWCP*, 17 BLR 1-9 (1992) are not affected by the revisions to Section 725.310.

of the district director's decision is sought. *Motichak v. Beth Energy Mines, Inc.*, 17 BLR 1-14 (1992); *Kott v. Director, OWCP*, 17 BLR 1-9 (1992). The administrative law judge, therefore, was authorized to address the merits of claimant's claim without first addressing whether the evidence was sufficient to establish modification of the district director's denial of the claim.

However, because the administrative law judge, in her consideration of whether there was a mistake in a determination of fact, considered all of the evidence of record, she addressed the merits of claimant's claim and therefore we need not address any further allegations of error with regard to her application of Section 725.310. *Motichak*, 17 BLR at 1-19; *Kott*, 17 BLR at 1-13.

The administrative law judge awarded benefits based on her finding that the opinion of Dr. Robinette, that pneumoconiosis contributed significantly to the miner's death, was well-reasoned and documented and entitled to great weight. Decision and Order at 7; Director's Exhibit 22. In contrast, she accorded the opinion of Dr. Naeye, that pneumoconiosis was not a contributing cause of the miner's death, little weight based on her finding that Dr. Naeye was less familiar with the miner's condition, as he admitted that he was not aware of the miner's occupational or smoking histories. Decision and Order at 7; Employer's Exhibit 1. Consequently, the administrative law judge found that the weight of the medical evidence established that the miner's pneumoconiosis contributed to his death, pursuant to Section 718.205(c). Decision and Order at 7.

Employer contends that the administrative law judge erred in weighing these medical opinions, arguing that she did not provide a valid explanation for according less weight to the opinion of Dr. Naeye. Employer also argues that the administrative law judge erred in crediting the opinion of Dr. Robinette as his opinion is too speculative and equivocal to be supportive of claimant's burden of proof.

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 her own conclusions. *Underwood v Elkay Mining Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-2-28 (4th Cir. 1997). Herein, the administrative law judge reasonably exercised her discretion as trier-of-fact in finding that, despite his credentials as a pathologist, Dr. Naeye's opinion was entitled to less weight because he did not have a complete picture of the miner's condition.<sup>4</sup> Decision and Order at 7; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21

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<sup>4</sup> Dr. Naeye stated that in support of his review, he received a copy of the miner's death certificate, a copy of the autopsy report and 17 glass slides of lung and heart tissue removed at the autopsy. Employer's Exhibit 1. However, he further noted that "[t]his man was reportedly a coal miner, but for how many years and what specific jobs he

BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). Consequently, we reject employer's contention that the administrative law judge erred in discounting this opinion.

However, we vacate the administrative law judge's finding that the opinion of Dr. Robinette established that pneumoconiosis was a substantially contributing cause of the miner's death. Decision and Order at 7. While the administrative law judge notes correctly that Dr. Robinette was the miner's treating physician since 1989 and that his opinion was based on his own observations and testing of the miner, she fails to provide a sufficiently detailed explanation as to whether the specifics of Dr. Robinette's report support a finding that pneumoconiosis was a substantially contributing cause of the miner's death. See *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Hicks*, 138 F.3d 524, 21 BLR 2-323; *Akers*, 131 F.3d 438, 21 BLR 2-269. On remand, the administrative law judge must provide a more detailed explanation for her rationale as to whether the opinion of Dr. Robinette, *in toto*, explains how pneumoconiosis hastened the miner's death pursuant to Section 718.205(c)(2), (5). *Id.*

Lastly, we reject employer's contention that the administrative law judge erred in declining to review the medical evidence contained in the miner's lifetime claims. The administrative law judge acknowledged that the evidence submitted with the miner's denied claims had been incorporated into the current record and that it supported the parties' stipulation that the miner suffered from coal workers' pneumoconiosis during his lifetime. Decision and Order at 3, 5. However, the administrative law judge determined that this evidence was not helpful in resolving the issue of whether pneumoconiosis was a contributing factor in the miner's death. *Id.* As the administrative law judge applied the proper test, which is whether pneumoconiosis hastened the miner's death in any way, it was not irrational for her to find that the evidence obtained in the years prior to the miner's death was not helpful to that inquiry. See 20 C.F.R. 718.205(c)(4); *Mays*, 176 F.3d 753, 757, 21 BLR 2-587, 2-592; *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993); *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211, 22 BLR 2-467, 2-481 (3d Cir. 2002)(holding that it was reasonable for the administrative law judge to discount evidence that was obtained years before the miner's death).

Accordingly, the administrative law judge's Decision and Order Granting Motion for Modification and Awarding Benefits is affirmed in part and vacated in part, and the

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performed is information that has not been provided to me" and that "I do not have a smoking history on this man." *Id.*

case is remanded to the administrative law judge 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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BETTY JEAN HALL  
Administrative Appeals Judge