

BRB No. 08-0137 BLA

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|-------------------------------|---|-------------------------|
| J.C.                          | ) |                         |
| (Widow of M.C.)               | ) |                         |
|                               | ) |                         |
| Claimant-Respondent           | ) |                         |
|                               | ) |                         |
| v.                            | ) |                         |
|                               | ) | DATE ISSUED: 09/18/2008 |
| UNITED STATES STEEL MINING    | ) |                         |
| 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 – Awarding Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garton & Hayes), Bluefield, West Virginia, for claimant.

Howard G. Salisbury, Jr. (Kay Casto & Chaney PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (2006-BLA-05922 and 2006-BLA-05933) of Administrative Law Judge Daniel L. Leland with respect to a 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.*

(the Act).<sup>1</sup> The administrative law judge initially considered the miner's claim, filed on January 30, 2003, pursuant to the regulations set forth in 20 C.F.R. Part 718. The administrative law judge found that the evidence of record was sufficient to establish that the miner had pneumoconiosis arising out of coal mine employment and was totally disabled due to the disease. Accordingly, the administrative law judge awarded benefits in the miner's claim. With respect to the survivor's claim, filed on November 22, 2005, the administrative law judge determined that Dr. Patel's opinion was sufficient to establish that pneumoconiosis was a contributing cause of the miner's death under 20 C.F.R. §718.205(c). The administrative law judge also awarded benefits, therefore, in the survivor's claim.

Employer argues on appeal that the administrative law judge erred in finding that the miner was totally disabled due to pneumoconiosis and that his death was due to pneumoconiosis. Claimant has responded and urges affirmance of the award of benefits in both claims. The Director, Office of Workers' Compensation Programs, has submitted a letter indicating that he will not file a brief in this appeal unless requested to do so by the Board.<sup>2</sup>

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 applicable law.<sup>3</sup> 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

### **The Miner's Claim**

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<sup>1</sup> Claimant is the miner's surviving spouse. The miner filed a claim for benefits on January 30, 2003. Living Miner's (LM) Director's Exhibit 2. The miner died on September 28, 2005, while his claim was still pending. Claimant filed a claim for survivor's benefits on November 22, 2005. Survivor's Claim Director's Exhibit 1. Because the miner's claim was pending when the survivor's claim was filed, the two claims were consolidated for decision.

<sup>2</sup> On appeal, the parties do not challenge the administrative law judge's finding that the miner had pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), or his determination that the miner was totally disabled under 20 C.F.R. §718.204(b)(2). These findings are, therefore, affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

<sup>3</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner's coal mine employment was in West Virginia. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); LM Director's Exhibit 6.

In order to establish entitlement to benefits in a miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish that the miner had pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis was totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Under Section 718.204(c), the administrative law judge considered the opinions of Drs. Mullin, Rasmussen, and Castle. Dr. Mullins examined the miner on March 18, 2003 and noted that the miner's chest x-ray showed changes compatible with coal dust exposure and that the miner had a history of heart disease, circulatory problems, and rheumatoid arthritis. Dr. Mullins diagnosed chronic obstructive pulmonary disease (COPD) and a moderate ventilatory impairment "which would have prevented performance of [the miner's] last coal mine job." Living Miner (LM) Director's Exhibit 21. Dr. Mullins attributed fifty-percent of the miner's impairment to coal workers' pneumoconiosis and fifty-percent to "other." *Id.* Dr. Rasmussen examined the miner on March 22, 2005 and determined that he had both clinical and legal pneumoconiosis and was totally disabled by a pulmonary impairment. Dr. Rasmussen further stated:

There are two obvious and one possible causes [sic] of Mr. Castle's disabling lung disease. These include his coal mine dust exposure and cigarette smoking, both of which cause COPD/emphysema and in fact use similar cellular and biochemical mechanisms leading to impairment in function quite indistinguishable by physical, radiographic or physiologic means.

LM Director's Exhibit 56.

Dr. Castle examined the miner on August 13, 2003 and diagnosed coal workers' pneumoconiosis by x-ray, moderate obstructive airway disease, coronary artery disease, and a history of rheumatoid arthritis. Dr. Castle indicated that the miner was totally disabled by COPD caused by cigarette smoking. Dr. Castle stated, "when coal workers' pneumoconiosis causes impairment, it generally does so by causing a mixed irreversible obstructive and restrictive ventilatory defect. These were not the findings in this case." LM Director's Exhibit 42. After the miner's death, Dr. Castle prepared a supplemental report based upon a review of the medical evidence submitted in the miner's claim and reiterated his conclusion that the miner's totally disabling pulmonary impairment was caused by cigarette smoking. Employer's Exhibit 1.

The administrative law judge noted that Drs. Mullins and Rasmussen identified clinical and legal pneumoconiosis as substantial contributing causes of the miner's

pulmonary disability. Decision and Order at 6. With respect to Dr. Castle's opinion, the administrative law judge indicated that it was "against the weight of the evidence and contradicts the finding that the miner had legal as well as clinical pneumoconiosis." *Id.* The administrative law judge concluded that "the preponderance of the evidence establishes that the miner was totally disabled due to legal as well as clinical pneumoconiosis." *Id.*

Employer contends that the administrative law judge erred in crediting Dr. Rasmussen's opinion as adequately reasoned on the issue of disability causation, as Dr. Rasmussen indicated that he was unable to distinguish between smoking and coal dust exposure as causes of the miner's impairment. Employer further maintains that the administrative law judge erred in crediting Dr. Mullins's opinion under Section 718.204(c), as Dr. Mullins provided no explanation of her opinion regarding the cause of the miner's totally disabling impairment. Employer also argues that the administrative law judge should have accorded greatest weight to Dr. Castle's opinion because he is Board-certified in Internal Medicine and Pulmonary Disease and is the only physician who reviewed the entire medical record.

We find no merit in employer's allegation of error regarding the administrative law judge's crediting of Dr. Rasmussen's opinion under Section 718.204(c). Contrary to employer's argument, a physician is not required to apportion degrees of causation provided that he or she identifies coal dust exposure as a substantially contributing cause of total disability. *See Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2003).

Employer is correct, however, in asserting that the administrative law judge did not adequately address Dr. Mullins's opinion, nor did he set forth his findings in sufficient detail. The Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), requires that an administrative law judge render all necessary findings of fact and law and set forth the rationale underlying these findings. In considering the medical opinions of record on a particular issue, an administrative law judge must initially determine whether the opinions are reasoned and documented and explain his findings. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). In the present case, the administrative law judge did not explain his decision to treat Dr. Mullins's opinion regarding the cause of the miner's totally disabling pulmonary impairment as documented and reasoned. Moreover, it is not apparent, on its face, that Dr. Mullins's opinion meets the latter criteria. Dr. Mullins causation opinion is set forth, in its entirety, in response to the question on Department of Labor Form CM-988 regarding "[t]he extent to which each of the [cardiopulmonary diagnoses] contributes to the impairment" LM Director's Exhibit 21. Dr. Mullins wrote, without elaboration, "50% CWP" and "50% other." *Id.*

We vacate, therefore, the administrative law judge's determination that the preponderance of evidence supports a finding of total disability due to pneumoconiosis pursuant to Section 718.204(c) and the award of benefits in the miner's claim. The case is remanded to the administrative law judge for reconsideration of the medical opinion evidence relevant to Section 718.204(c). In addressing the conflicting medical opinions of Drs. Mullins, Rasmussen, and Castle on remand, the administrative law judge must address the qualifications of the physicians, the sophistication of their opinions, and the extent to which their conclusions are supported by the underlying objective evidence. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). The administrative law judge must also set forth his findings in detail, including the underlying rationale, in accordance with the APA. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

### **The Survivor's Claim**

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718 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 had complicated pneumoconiosis. 20 C.F.R. §§718.1; 718.202; 718.203; 718.205(c); 718.304; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastened the miner's death. 20 C.F.R. §718.205(c)(2), (5); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 980, 16 BLR 2-90 (4th Cir. 1992).

Employer contends that the administrative law judge erred in finding that Dr. Patel provided a well-reasoned opinion sufficient to establish that pneumoconiosis was a contributing cause of the miner's death pursuant to Section 718.205(c). This contention has merit.

In his Decision and Order, the administrative law judge reviewed the death certificate and the opinions of Drs. Castle and Patel. Dr. Castle prepared a report at employer's request in which he reviewed the results of his own examination of the miner prior to his death and the medical reports prepared by Drs. Mullins and Rasmussen, who had examined the miner in conjunction with his claim for benefits. Dr. Castle stated that he could not identify the cause of the miner's demise because he had "no records concerning his death or the events surrounding his death." Employer's Exhibit 1. Dr. Patel prepared the death certificate and identified acute respiratory failure due to

pneumoconiosis as the cause of death. Survivor's Claim Director's Exhibit 10. In a subsequent letter, Dr. Patel stated that the miner:

[R]ecently expired on 09/26/2005 because of [a]cute [r]espiratory failure. He did require multiple respiratory medications including [i]nhalers and nebulised medications. He was suffering from [p]neumoconiosis, COPD and [h]ypoxemia. In my opinion, and [sic] pneumoconiosis was the contributing and accelerating cause of respiratory failure and death.

Claimant's Exhibit 1.

The administrative law judge found that the death certificate and Dr. Castle's opinion were entitled to no weight pursuant to Section 718.205(c). With respect to Dr. Patel's opinion, the administrative law judge stated:

Dr. Patel[,] however, provided a well reasoned opinion that the miner's pneumoconiosis was both a contributing and accelerating cause of his respiratory failure and death and I credit his opinion. I therefore find that pneumoconiosis was a substantial contributing cause of the miner's death and that claimant is entitled to survivor's benefits.

Decision and Order at 6. As employer contends, the basis for the administrative law judge's finding that Dr. Patel's opinion is well reasoned cannot be discerned. A reasoned opinion is one in which the administrative law judge finds that the underlying documentation is adequate to support the physician's conclusions. *Fields*, 10 BLR at 1-22; *Fuller v. Gibraltar Coal Corp.*, 6 BLR at 1294. In the present case, Dr. Patel did not identify the documentation supporting his opinion nor is the presence of such documentation in the record readily discernible, as there is no autopsy report or other evidence pertaining to the miner's death.

We vacate, therefore, the administrative law judge's finding that claimant satisfied her burden of proof under Section 718.205(c) and the award of benefits in the survivor's claim. On remand, the administrative law judge must reconsider Dr. Patel's opinion, render a finding as to whether it is reasoned and set forth the rationale underlying his finding as required by the APA. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, the administrative law judge's Decision and Order – Awarding Benefits is affirmed in part and vacated in part and the case is remanded to the administrative law judge for further proceedings 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