



BRB No. 14-0426 BLA

DANA G. WOOTEN)	
(Widow of DALLAS WOOTEN))	
)	
Claimant-Respondent)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	
CORPORATION)	
)	DATE ISSUED: 09/03/2015
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 and Decision on Reconsideration of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Paul E. Frampton and Thomas M. Hancock (Bowles Rice LLP), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order and Decision on Reconsideration (2011-BLA-6322) of Administrative Law Judge Richard A. Morgan awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a survivor's claim filed on September 8,

2010.¹

After crediting the miner with thirty-four years of coal mine employment,² the administrative law judge found that the evidence did not establish the existence of complicated pneumoconiosis. Consequently, the administrative law judge found that claimant could not invoke the irrebuttable presumption of death due to pneumoconiosis provided at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). Considering amended Section 411(c)(4), 30 U.S.C. §921(c)(4),³ the administrative law judge found that the evidence did not establish the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b) and, therefore, determined that claimant failed to invoke the Section 411(c)(4) presumption.⁴ Turning to whether claimant could affirmatively establish her entitlement to survivor's benefits under 20 C.F.R. Part 718, the administrative law judge determined that the evidence did not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge, however, found that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge also found that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). Accordingly, the administrative law judge awarded benefits.

Employer timely moved for reconsideration, asserting that the administrative law judge erred in finding that the evidence established that the miner's death was due to

¹ Claimant is the surviving spouse of the miner, who died on August 10, 2010. Director's Exhibit 11.

² The record indicates that the miner's coal mine employment was in West Virginia. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

³ Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner's death was due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4).

⁴ The amendments also revived Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of his or her death is automatically entitled to receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l). Claimant cannot benefit from this provision, as the miner's claim for benefits was denied. *Wooten v. Peabody Coal Co.*, BRB No. 99-1024 BLA (June 28, 2000) (unpub.).

pneumoconiosis pursuant to 20 C.F.R. §718.205(b). Upon review of employer's motion for reconsideration and the relevant evidence, the administrative law judge found no basis to alter his award of benefits, and denied employer's motion for reconsideration.

On appeal, employer argues that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Employer also argues that the administrative law judge erred in finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). Neither claimant, nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

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'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Where the Section 411(c)(3) and 411(c)(4) statutory presumptions do not apply, claimant must affirmatively establish that pneumoconiosis was the cause or was a substantially contributing cause of the miner's death. *See* 20 C.F.R. §§718.1, 718.205(b)(1), (2). Pneumoconiosis is a substantially contributing cause of death "if it hastens the miner's death." 20 C.F.R. §718.205(b)(6).

Legal Pneumoconiosis

Employer argues that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis⁵ pursuant to 20 C.F.R. §718.202(a)(4). Employer specifically contends that the administrative law judge erred in finding that Dr. Atkins' opinion was sufficient to establish the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4).

In considering whether the medical opinion evidence established the existence of legal pneumoconiosis, the administrative law judge considered the opinions of Drs. Atkins, Kuenster, Oesterling, Caffrey, and Zaldivar. Dr. Atkins, the miner's treating physician, indicated on a questionnaire that the miner suffered from both clinical and

⁵ "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

legal pneumoconiosis.⁶ Claimant's Exhibit 5. Although Dr. Kuenster, the autopsy prosector, diagnosed bronchopneumonia, and noted that the cut surfaces of the miner's lungs showed "moderate emphysematous changes," he did not indicate whether these conditions were due to coal mine dust exposure. Director's Exhibit 12. Dr. Oesterling reviewed the miner's autopsy slides, and diagnosed "moderately severe centrilobular pulmonary emphysema." Employer's Exhibit 3. Dr. Oesterling noted that the miner's emphysema was "accompanied by numerous macrophages, which appear to be tobacco smoke related." *Id.* Although Dr. Caffrey also diagnosed centrilobular emphysema, he did not discuss the etiology of the disease. Employer's Exhibit 2. Dr. Zaldivar opined that the miner did not suffer from legal pneumoconiosis, attributing the miner's emphysema solely to cigarette smoking. Employer's Exhibits 1. During a subsequent deposition, Dr. Zaldivar characterized the miner's emphysema as "nonspecific." Employer's Exhibit 6 at 13.

In his consideration of the medical opinion evidence, the administrative law judge noted that Dr. Kuenster, the autopsy prosector, "did not opine on legal pneumoconiosis." Decision and Order at 17. The administrative law judge also found that Dr. Caffrey did not address the cause of the miner's emphysema. *Id.* at 18. The administrative law judge discredited the opinions of Drs. Oesterling and Zaldivar because he found that they were "based upon a premise antithetical to the Act," noting that neither physician acknowledged the Department of Labor's position that coal dust-induced emphysema and smoke-induced emphysema occur through similar mechanisms. *Id.* at 17-18. Finally, the administrative judge credited Dr. Atkins's diagnosis of legal pneumoconiosis, noting that the doctor's treatment records indicate chronic obstructive pulmonary disease (COPD). *Id.* at 18. The administrative law judge explained that:

Given that I give additional weight to Dr. Atkins as the miner's treating physician; that I discredit Drs. Oesterling, Caffrey, and Zaldivar; and that the documented pathology evidence established emphysema and the presence of anthracotic pigment in the lungs, I find that claimant has established legal pneumoconiosis by a preponderance of the evidence.

Decision and Order at 18.

Employer argues that the administrative law judge erred in crediting Dr. Atkins's diagnosis of legal pneumoconiosis without considering whether it was well-reasoned and well-documented. Employer's Brief at 13. Employer asserts that Dr. Atkins provided no explanation for his conclusion that the miner suffered from legal pneumoconiosis. *Id.*

⁶ The record contains Dr. Atkins's treatment records from January 16, 2007 through April 19, 2011. The records document Dr. Atkins's treatment of the miner's various diseases, including chronic bronchitis and chronic obstructive pulmonary disease (COPD). Claimant's Exhibit 6.

Although an administrative law judge may choose to discredit an opinion that lacks a thorough explanation, he is not legally compelled to do so. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212, 22 BLR 2-162, 2-176 (4th Cir. 2000). However, the regulations provide that a physician's finding of pneumoconiosis must be "based on objective medical evidence" and must be "supported by a reasoned medical opinion." 20 C.F.R. §718.202(a)(4). The administrative law judge erred in not addressing whether Dr. Atkins's diagnosis of legal pneumoconiosis was based upon objective medical evidence, and erred in not addressing whether it was sufficiently reasoned. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985). We, therefore, vacate the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). On remand, the administrative law judge must evaluate the credibility of Dr. Atkins's diagnosis of legal pneumoconiosis in light of his qualifications, the explanation for his medical findings, the documentation underlying his medical judgment, and the sophistication of, and bases for, his conclusions.⁷ See *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997).

In light of our decision to vacate the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), we also vacate the administrative law judge's finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). However, in the interest of judicial economy, we will address employer's contention that the administrative law judge erred in finding that Dr. Atkins's opinion was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b).

Death Due to Pneumoconiosis

In addressing the issue of whether the miner's death was due to pneumoconiosis, the administrative law judge considered the medical opinions of Drs. Atkins, Oesterling, Caffrey, and Zaldivar. Dr. Atkins completed the miner's death certificate on August 17, 2010. Dr. Atkins attributed the miner's death to nonalcoholic cirrhosis. Director's Exhibit 11. Dr. Atkins listed congestive heart failure and valvular heart disease as other significant conditions contributing to death. *Id.* Dr. Atkins subsequently completed a

⁷ Although the administrative law judge accurately noted that Dr. Atkins was the miner's treating physician, Section 718.104(d) provides that the weight given to the opinion of a treating physician shall "be based on the credibility of the physician's opinion *in light of its reasoning and documentation*, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d) (emphasis added).

questionnaire on December 1, 2010, wherein he indicated that pneumoconiosis caused, hastened, or contributed to the miner's death. Claimant's Exhibit 5. Dr. Atkins explained that the miner "died of pneumonia which he could not tolerate due to his chronic lung disease." *Id.* On April 19, 2011, Dr. Atkins submitted a letter wherein he stated that "black lung was a substantial contributing factor to [the miner's] death." Claimant's Exhibit 6.

Dr. Oesterling opined that the "minimal dust present in [the miner's] lungs due to coal mine employment [was] insufficient to have contributed to, hastened or caused his death. Employer's Exhibit 3. Dr. Caffrey opined that the miner "had multiple medical problems related to his heart, liver, gastrointestinal tract, and kidneys[,] all of which contributed to and led to his death." Employer's Exhibit 2. Dr. Caffrey opined that none of these conditions was related to the miner's coal mine dust exposure. *Id.* Dr. Zaldivar attributed the miner's death to cirrhosis of the liver. Employer's Exhibit 6 at 15. Dr. Zaldivar opined that the miner's coal mine dust exposure did not hasten his death. *Id.* at 26. Although Dr. Zaldivar acknowledged that the miner "died with pneumonia," he explained that this was because the miner's "whole body was failing." *Id.* at 34.

The administrative law judge accorded less weight to the opinions of Drs. Oesterling, Caffrey and Zaldivar because they did not discuss the role that the miner's pneumonia played in his death. Decision and Order at 24; Decision on Reconsideration at 4. The administrative law judge found that Dr. Atkins's opinion was sufficient to establish that the miner's death was due to pneumoconiosis:

Although Dr. Atkins did not explicitly state that pneumoconiosis was a "substantially contributing cause" of death, he did state that it hastened death because the miner could not tolerate pneumonia given his pneumoconiosis. Because pneumoconiosis is a substantially contributing cause of death if it hastens death, Dr. Atkins'[s] opinion is tantamount to identifying pneumoconiosis as a substantial contributing cause of death. While a close call, I find that the claimant has demonstrated by a preponderance of the evidence that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death.

Decision and Order at 25 (citations omitted).

In denying employer's motion for reconsideration, the administrative law judge further explained:

Dr. Atkins explained that but for the miner's chronic lung disease, he would have been able to tolerate the pneumonia. Had he tolerated the pneumonia, therefore, he would have died later rather than sooner. Claimant has thus

established by a preponderance of the evidence that pneumoconiosis, by making the miner's pneumonia intolerable, hastened his death.

Decision on Reconsideration at 4-5 (footnote omitted). The administrative law judge, therefore, found that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b).

Employer argues that the administrative law judge erred in failing to adequately address whether Dr. Atkins's opinion that the miner's death was due to pneumonia was sufficiently reasoned. We agree. The administrative law judge failed to adequately address the bases for Dr. Atkins's opinions (1) that pneumonia was a cause of the miner's death; and (2) that the miner's legal pneumoconiosis rendered him unable to tolerate the pneumonia. See *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-263 (4th Cir. 2000); *Clark*, 12 BLR at 1-155; *Lucostic*, 8 BLR at 1-47. Consequently, if on remand the administrative law judge again finds that the evidence establishes the existence of legal pneumoconiosis, he must reconsider whether the evidence establishes that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b).⁸ In so doing, he should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. See *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

⁸ Because this case arises within the jurisdiction of the Fourth Circuit, we reject employer's assertion that the administrative law judge should have applied the standard adopted by the United States Court of Appeals for the Sixth Circuit in determining whether pneumoconiosis hastened the miner's death. Unlike the Sixth Circuit, which has required the medical evidence to establish the conditions under which pneumoconiosis has hastened death, i.e., through a specifically defined process that reduces the miner's life by an estimable period of time, *Eastover Mining Co. v. Williams*, 338 F.3d 501, 518, 22 BLR 2-625, 2-655 (6th Cir. 2003), the Fourth Circuit has held that pneumoconiosis is a substantially contributing cause of a miner's death if it actually serves to hasten death in any way. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

Accordingly, the administrative law judge's Decision and Order and Decision on Reconsideration awarding benefits are vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge