BRB No. 09-0589 BLA

BETTY JO RICE (Widow of JOHN RICE) Claimant-Respondent v. ALFRED RICE COMPANY, INCORPORATED and METLIFE INSURANCE COMPANY OF CONNECTICUT c/o TRAVELERS INSURANCE Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 04/30/2010 DECISION and ORDER

Appeal of the Decision and Order–Award of Survivor's Benefits of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens Law Center), Whitesburg, Kentucky, for claimant.

Lois A. Kitts and James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

Rita Roppolo (M. Patricia Smith, Solicitor of Labor; Rae Ellen Frank James, 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:

Alfred Rice Company, Incorporated (employer) appeals the Decision and Order–Award of Survivor's Benefits (08-BLA-5054) of Administrative Law Judge Larry S. Merck rendered on a survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C.§§921(c)(4) and 932(*l*)).[1] The administrative law judge credited the miner with fourteen years of coal mine employment, as stipulated by the parties.[2] The administrative law judge found that employer is the properly designated responsible operator. The administrative law judge also found that claimant established that the miner had simple clinical pneumoconiosis, as well as legal pneumoconiosis[3] in the form of chronic obstructive pulmonary disease (COPD) due to coal mine dust exposure, pursuant to 20 C.F.R. §§718.202(a)(1), (4), and further established that the miner's pneumoconioses arose out of coal mine employment, pursuant to 20 C.F.R. §718.203(b). The administrative law judge also found that

[1] Claimant is the surviving spouse of the deceased miner. The miner had filed a lifetime claim on October 31, 1990, and was awarded benefits on September 15, 1992. Director's Exhibit 1 at 46, 293. The miner died on January 30, 2004, Director's Exhibit 15, and on February 26, 2004, claimant filed her claim for survivor's benefits. Director's Exhibit 2. The recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, do not apply to the instant case, as the survivor's claim was filed before January 1, 2005.

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

[3] Clinical pneumoconiosis is a disease "characterized by [the] permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). 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).

claimant established that the miner died due to legal pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer initially challenges the administrative law judge's finding that employer is the properly designated responsible operator, and asserts that liability for the payment of benefits should be transferred to the Black Lung Disability Trust Fund. Employer further asserts that the administrative law judge erred in finding that claimant established that the miner had legal pneumoconiosis pursuant to Section 718.202(a)(4) and, therefore, erred in finding that the miner's death was due to legal pneumoconiosis pursuant to Section 718.205(c). Employer also asserts that the administrative law judge erred in failing to determine the date for the commencement of benefits. Claimant responds, urging affirmance of the administrative law judge's decision. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response letter in this appeal. The Director disagrees with employer on the responsible operator issue, asserting that there is no reversible error in the administrative law judge's designation of employer as the responsible operator. The Director takes no position on the merits of employer's challenge to the administrative law judge's determination that claimant is entitled to benefits. Employer filed a reply brief to the Director's response brief. [4]

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).

Responsible Operator

We first address employer's assertion that it is not the proper responsible operator in this case. The administrative law judge correctly found that the record reflects that the miner worked for Alfred Rice Trucking Company (Rice Trucking) for a total of fourteen years, ending with his retirement in 1990. Director's Exhibits 3 at 4, 5, 7, 61 at 60. In 1998, the owner of Rice Trucking, Mr. Alfred Rice, transferred the company to his son, Mr. James Rice, who incorporated it as Alfred Rice Company, Incorporated (employer). Director's Exhibit 61 at 62. The district director recognized that claimant had been employed by Rice Trucking until his retirement in 1990, but determined that as Rice

[4] The administrative law judge's findings that claimant established that the miner had clinical pneumoconiosis, arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a)(1), 718.203(b) are unchallenged on appeal. These findings are therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Trucking subsequently ceased to exist, its successor company, employer, is primarily liable for the payment of any benefits. Director's Exhibit 61 at 6. Thus, the district director identified employer as the responsible operator.

Reviewing the evidence and the arguments of the parties, the administrative law judge initially determined that employer is the properly designated successor operator, and, as such, bears the burden to establish that it is not liable for payment, either by establishing that it is not financially capable of paying benefits, or by showing that the miner was more recently employed by another company that is financially capable of assuming liability for payment. Decision and Order at 8. The administrative law judge initially found that employer conceded that it is financially capable of paying benefits. Decision and Order at 6; Director's Exhibit 28. The administrative law judge further found that employer failed to meet its burden to establish that the prior operator is financially capable of assuming liability for the payment of any benefits. Decision and Order at 7-8. Thus, the administrative law judge concluded that employer is responsible for the payment of any benefits in this case.

In order to meet the regulatory definition of a responsible operator, otherwise known as a "potentially liable operator," the miner's disability or death must have arisen out of employment with the operator or its successor, the operator or successor must have been in business after June 30, 1973, the operator or successor must have employed the miner for a cumulative period of not less than one year, the employment must have occurred after December 31, 1969, and the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e). When, as in the instant case, an operator ceases to exist by reorganization, liquidation, sale of assets, merger, consolidation, or division, a successor operator is created. 20 C.F.R. §725.492(b)(1)-(3). A "successor operator" is defined as "[a]ny person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such operator, or substantially all of the assets thereof[.]" 20 C.F.R. §725.492. The regulation at Section 725.492(b) further provides that a successor operator is only liable for the payment of benefits to any miners employed by the prior operator if the prior operator cannot meet all of the conditions delineated in Section 725.494. However, while the Director bears the burden of proving that the responsible operator initially found liable for the payment of benefits pursuant to §725.410 (the "designated responsible operator") is a potentially liable operator, 20 C.F.R. §725.495(b), once a potentially liable operator has been properly identified, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability or that another operator that more recently employed the miner is financially capable of doing so. 20 C.F.R. §725.495(c).

Employer initially asserts that the administrative law judge erred in finding that it is the successor to Rice Trucking. Employer specifically asserts that it cannot be a successor operator pursuant to 20 C.F.R. §725.492 because it did not acquire a coal mine or a coal mining business. Employer's Brief at 14. Employer asserts that "the miner's last full year of coal mine employment [was] . . . with [Rice Trucking]," where the miner worked as a trucker hauling coal from the mine site to the processing site. Employer's Brief at 15; Director's Exhibits 1 at 282-83, 61 at 61. Employer contends that, therefore, Rice Trucking should be liable for the payment of any black lung benefits. Employer's Brief at 15. Thus, employer essentially concedes that Rice Trucking "employ[ed] [the miner] in the transportation of coal," and, by definition, was involved in the "coal mining business." 20 C.F.R. §724.491; Employer's Brief at 15. As the administrative law judge found, in 1998, Mr. Alfred Rice, the owner of Rice Trucking, retired and passed the business to his son, who reorganized it as employer.[5] Decision and Order at 7. Moreover, employer concedes that it, formerly, Rice Trucking, continues to operate as a "trucking business, which hauls coal." Employer's Brief at 15. Therefore, we hold that substantial evidence supports the administrative law judge's finding that employer acquired the "coal mining business" of Rice Trucking, or "substantially all of the assets thereof," and is therefore the successor operator in this case. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); Decision and Order at 7.

Employer next asserts that, assuming employer is a successor operator, it is not liable for the payment of benefits because the miner never worked for employer, and the miner's last coal mine employment was with Rice Trucking, which possessed sufficient assets to secure the payment of any benefits that may be awarded. Employer's Brief at 13-15.

First, to the extent that employer argues that Rice Trucking is primarily liable simply because the miner never worked for employer, we disagree. The applicable regulations provide that:

> In any case in which an operator may be considered a successor operator, as determined in accordance with [20 C.F.R.] §725.492, any employment with a prior operator shall also be deemed to be employment with the successor operator.

[5] Mr. James Rice testified at his deposition that his father retired on June 30, 1998, and that Mr. James Rice "started a new company, [employer], with a new tax I.D., a new everything, and we went from there. I just signed up, drew up a lease agreement and I leased all of his equipment and everything he had." Director's Exhibit 61 at 50-51.

20 C.F.R. §725.493(b)(1). While the regulation further provides that in a case such as this one, where the miner was not independently employed by the successor operator, "the prior operator shall remain primarily liable for the payment of any benefits," this regulation must be read in conjunction with 20 C.F.R. §725.494, which, as set forth above, requires a potentially liable operator to be capable of paying benefits. Thus, for Rice Trucking to be liable for the payment of benefits, employer must establish that Rice Trucking possessed sufficient assets to secure the payment of any benefits that may be awarded. Employer contends that the deposition testimony of Mr. Alfred Rice, the former owner of Rice Trucking, and his son, Mr. James Rice, the current owner of employer, establishes that Rice Trucking had an insurance policy that was in effect at the time of the miner's last employment, and, therefore, was capable of paying benefits.

Considering employer's evidence, the administrative law judge correctly found that while Mr. Alfred Rice had testified that there was never a period of time when Rice Trucking was not covered by insurance, Mr. Rice did not specify whether this insurance provided coverage for claims under the Black Lung Benefits Act. Decision and Order at 7-8; Director's Exhibit 61 at 63. Thus, the administrative law judge acted within his discretion in concluding that employer failed to meet its burden "to prove that the prior operator could assume liability for the continuing payment of benefits to Claimant," pursuant to Section 725.495(c)(2). *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190, 1-192 (1989); Decision and Order at 8; Director's Exhibit 61 at 63.

We note that in his brief on appeal, the Director now informs us that the record reflects that Traveler's Insurance provided coverage for both Rice Trucking and employer.[6] Director's Brief at 2-3. Because the Director named both employer and its carrier, Travelers Insurance, as the potentially liable operator in the survivor's claim, we concur with the Director's assertion that it makes no practical difference whether Rice Trucking, or employer, is ultimately found liable for the payment of benefits. Director's Brief at 3. Contrary to employer's contention, any error by the Director in identifying employer, instead of Rice Trucking, as the potentially liable operator would not serve to relieve employer of liability for benefits as the successor operator. Employer's Reply

[6] Employer asserts that it has "no independent information" concerning the identity of the carrier for Rice Trucking. In response to the question of who insured Rice Trucking in 1990, Mr. Alfred Rice testified that, "I don't remember who. I know it was through Walter P. Walters but I don't know what carrier it was." Director's Exhibit 61 at 63. However, as the Director, Office of Workers' Compensation Programs, contends, the record reflects that Rice Trucking was covered by Travelers Insurance, and that the policy included coverage for the payment of black lung benefits. Director's Exhibit 1 at 48, 60, 219, 222-24.

Brief at 3-4. As discussed above, once the Director properly identified employer as the potentially liable successor operator, the burden shifted to employer to establish that Rice Trucking possessed sufficient assets to secure the payment of any benefits that may be awarded.[7] Because we have affirmed the administrative law judge's finding that employer failed to meet its burden to establish that Rice Trucking had the ability to pay benefits, we affirm the administrative law judge's determination that employer, as the successor operator, is the responsible operator liable for the payment of any benefits awarded in the survivor's claim. *See Kentland Elkhorn Coal Corp. v. Hall*, 287 F.3d 555, 565 n.6, 22 BLR 2-349, 2-366 n.6 (6th Cir. 2002); *C & K Coal Co. v. Taylor*, 165 F.3d 254, 256, 21 BLR 2-523, 2-529-30 (3d Cir. 1999); Decision and Order at 5-8; Director's Exhibit 61.

Merits of Entitlement

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, 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* 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993). For survivors' 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 pursuant to 20 C.F.R. §718.205(c)(1), (3), or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2), (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); *Mills v. Director, OWCP*, 348 F.3d 133, 136, 23 BLR 2-12, 2-17 (6th Cir. 2003); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

Employer initially asserts that the administrative law judge erred in finding the existence of legal pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(4). Relevant to the existence of legal pneumoconiosis, the administrative law judge properly found that Drs. Rosenberg, Jarboe, Kousa, and Mannino each opined that the miner suffered from a chronic lung disease, and that the miner's hospitalization records also document the miner's treatment for COPD, acute respiratory failure, and chronic bronchitis, as well as congestive heart failure. Decision and Order at 14-19. The administrative law judge correctly found that Drs. Rosenberg and Jarboe opined that the

[7] As discussed earlier, the administrative law judge found that employer conceded that it is capable of paying benefits. Decision and Order at 6; Director's Exhibit 28.

miner's COPD is due entirely to smoking,[8] while Drs. Kousa and Mannino opined that the miner's COPD results from a combination of his smoking and coal dust exposure histories, and the miner's hospitalization records do not specifically identify the etiology of the miner's COPD. Decision and Order at 14-19; Director's Exhibits 17-19; Employer's Exhibits 1-4, 7. The administrative law judge initially found that the opinions of Drs. Rosenberg and Jarboe are not well-reasoned because they are based, in part, on assumptions inconsistent with the Department of Labor's (DOL's) scientific findings. Decision and Order at 16, 18, 23. The administrative law judge also accorded little weight to Dr. Kousa's opinion, finding it inadequately reasoned and documented,[9] and accorded little weight to the miner's hospitalization records, as they do not contain a reasoned diagnosis of pneumoconiosis.[10] Decision and Order at 20-21. By contrast, the administrative law judge found the opinion of Dr. Mannino to be well-reasoned and well-documented, and thus entitled to the greatest weight. Consequently, the administrative law judge concluded that claimant established the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4). The administrative law judge further found that he need not separately determine whether claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b) because that finding was subsumed in his finding of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Kiser v. L & J Equip. Co.*, 23 BLR 1-246, 1-259 n.18 (2006); *Henley v. Cowan & Co.*, 21 BLR 1-147, 1-151 (1999); Decision and Order at 23.

Employer argues that the administrative law judge erred in discrediting the opinions of Drs. Rosenberg and Jarboe on the ground that their opinions are inconsistent

---

[8] The administrative law judge found that the miner had at least a fifty pack year smoking history. Decision and Order at 5.

[9] Dr. Kousa, who is Board-certified in Internal Medicine and was the miner's treating physician for the last two years of his life, completed a questionnaire on September 9, 2004, apportioning the miner's pulmonary problems, ninety percent to coal mine dust exposure and ten percent to smoking. The administrative law judge found that Dr. Kousa did not state the basis for this apportionment, and did not demonstrate an accurate knowledge of the miner's smoking and employment histories. Decision and Order at 20-21; Director's Exhibit 34.

[10] The administrative law judge found that the hospital and treatment records, dating from 1990 through 2004, list diagnoses of chronic obstructive pulmonary disease (COPD), chronic bronchitis, lung disease, emphysema, and "probable" pneumoconiosis, but do not clearly diagnose pneumoconiosis or attribute the miner's lung conditions to coal dust exposure. Decision and Order at 22; Director's Exhibits 17-19; Employer's Exhibit 7.

with DOL's findings regarding the prevailing medical literature discussed in the preamble to the revised regulations. Employer's Brief at 18. We disagree.

Dr. Rosenberg, who is Board-certified in Internal Medicine and Pulmonary Disease, reviewed the miner's records and completed a report dated April 3, 2006. Employer's Exhibit 1. In opining that the miner's COPD was due only to smoking, Dr. Rosenberg reasoned:

> There is no question that coal mine dust exposure can cause obstructive lung disease. When it does so, it begins as focal emphysema in and around the coal macule. As the coal macule evolves into micronodules, macronodules and potentially progressive massive fibrosis, the associated emphysema can also worsen. With respect to [the miner], he had marked bullous disease occupying most of the upper lung fields on both sides, causing compressive atelectasis in the lower lung fields. *Such marked bullous disease, without micronodularity and findings of progressive massive fibrosis, clearly does not represent a condition which has been caused or aggravated by past coal mine dust exposure.* This type of bullous disease represents chronic obstructive pulmonary disease related to his past smoking history that started in his early teenage years.

Employer's Exhibit 1 at 8 (emphasis added). Dr. Rosenberg reiterated his opinion at his April 26, 2006 deposition. Employer's Exhibit 2 at 22, 24-25.

Dr. Jarboe, who is Board-certified in Internal Medicine and Pulmonary Disease, reviewed the miner's records and completed a report dated July 24, 2008. Employer's Exhibit 3. In support of his opinion that the miner's emphysema was not due to coal dust exposure, Dr. Jarboe explained:

> Multiple chest x-rays and CT scans of the chest showed *no nodulation compatible with a diagnosis of coal workers' pneumoconiosis*. There was *no concordance of nodulation* (dust deposition) and the presence of the emphysema. Thus we are left to conclude that the emphysema present in [the miner] was the result of a long history of very heavy cigarette smoking.

Employer's Exhibit 3 at 7 (emphasis added). At his deposition on September 4, 2008, Dr. Jarboe reiterated his opinion. Employer's Exhibit 4 at 10-15.

Contrary to employer's contention, the administrative law judge reasonably rejected the opinions of Drs. Rosenberg and Jarboe because they each required the miner's COPD with emphysema to occur with clinical pneumoconiosis before it could constitute COPD with emphysema due to coal dust exposure, or legal pneumoconiosis. 20 C.F.R. §718.201(a)(1), (2); 65 Fed. Reg. 79,939 (Dec. 20, 2000); *see Midland Coal*

Co. v. Director, OWCP [*Shores*], 358 F.3d 486, 490, 23 BLR 2-18, 2-26 (7th Cir. 2004); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483 n.7, 22 BLR 2-265, 2-281 n.7 (7th Cir. 2001); *J.O.* [*Obush*] *v. Helen Mining Co.*, BLR , BRB No. 08-0671 BLA (June 24, 2009); *see also Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 638, BLR (6th Cir. 2009); Decision and Order at 15-18; Employer's Exhibits 1-4. In doing so, the administrative law judge did not substitute his judgment for that of the medical experts, as employer asserts. Rather, the administrative law judge, as the trier-of-fact, permissibly exercised his discretion to determine whether the medical opinions are supported by accepted scientific evidence, as determined by DOL when it revised the definition of pneumoconiosis. *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *Mountain Clay, Inc. v. Collins*, 256 Fed. Appx. 757 (6th Cir. Nov. 29, 2007)(unpub.); *Obush*, slip op. at 8-9. Thus, we affirm the administrative law judge's determination to discredit the opinions of Drs. Rosenberg and Jarboe.

We further reject employer's argument that the administrative law judge erred in relying on the opinion of Dr. Mannino to find that claimant established the existence of legal pneumoconiosis. Employer contends that Dr. Mannino's opinion is not sufficiently explained or adequately documented to support claimant's burden of proof. Employer's Brief at 20-22. Employer's contentions lack merit.

Dr. Mannino, who is Board-certified in Internal Medicine and Pulmonary Disease, reviewed the miner's medical records and concluded, in a report dated July 18, 2008, that "coal mine dust exposure was a contributing cause of [the miner's] very significant COPD." Claimant's Exhibit 3 at 2. Dr. Mannino reasoned that the miner developed "very serious" respiratory disease at a "very young age," and that recent medical studies from 2003 support the doubling of a risk of developing COPD from work in a dusty environment, independent of whether a person smokes. *Id.* Dr. Mannino referred to the two factors of smoking and coal mine dust exposure, together, as "interacti[ng]," increasing the risk of COPD "in excess of each risk factor separately." *Id.* Dr. Mannino opined that the miner's "smoking history, while extensive, does not diminish the importance of his coal dust exposure in the development and progression of his disease." *Id.*

The administrative law judge found that Dr. Mannino is "well-qualified in the field of pulmonary medicine," and had "reviewed extensive medical records and considered both [the] Miner's significant smoking history and his lengthy history of coal mine employment." Decision and Order at 19. The administrative law judge concluded that while Dr. Mannino "did not apportion the effects of cigarette smoking and coal dust exposure, he clearly opined that coal dust exposure played a contributory r[o]le in [the] Miner's chronic lung disease," and that his opinion constitutes a well-reasoned and well-documented diagnosis of legal pneumoconiosis. Decision and Order at 19-23.

The United States Court of Appeals for the Sixth Circuit has held that a physician's opinion that a miner's impairment "could be due to a combination of cigarette smoking and coal dust exposure" and that coal dust "contributes to some extent in an undefineable proportion," can constitute substantial evidence sufficient to support a claimant's burden of proving the existence of legal pneumoconiosis. *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 358, 23 BLR 2-472, 2-483 (6th Cir. 2007). In addition, there is no merit to employer's assertion that the administrative law judge erred in crediting Dr. Mannino's opinion as well-reasoned and well-documented. Contrary to employer's contention, the administrative law judge specifically considered the quality of the reasoning underlying Dr. Mannino's opinion, noting Dr. Mannino's explanation that "coal dust exposure can significantly exacerbate the negative effects of smoking through 'interaction,'" and Dr. Mannino's observation that the miner had such severe COPD at such a young age, in contrast to most of his patients. Decision and Order at 19. In addition, the administrative law judge correctly noted that Dr. Mannino's opinion was based on his review of "extensive records," including x-ray and computerized tomography interpretations, the miner's hospitalization and treatment records, the miner's death certificate, and the medical opinions of Drs. Rosenberg and Kousa. Decision and Order at 18. Thus, as Dr. Mannino's opinion was based on medical records, objective data, and other criteria enumerated at 20 C.F.R. §718.202(a)(4), the administrative law judge permissibly concluded that Dr. Mannino's diagnosis of legal pneumoconiosis was entitled to full probative weight. *Rowe*, 710 F.2d at 251, 255 n.6, 5 BLR at 2-99, 2-103 n.6; *Trumbo*, 17 BLR at 1-85, 1-88-89 n.4; Decision and Order at 29. In asserting that Dr. Mannino's opinion is not well-reasoned or well-documented, employer essentially asks the Board to assess the credibility of the doctor's opinion, which we are not authorized to do. *Anderson*, 12 BLR at 1-113. Because the administrative law judge's determination is rational and supported by substantial evidence, we affirm the administrative law judge's credibility determination. *See Martin*, 400 F.3d at 305, 23 BLR at 2-283; *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 19, 23; Claimant's Exhibit 3. Consequently, we affirm the administrative law judge's reliance on Dr. Mannino's opinion to find that claimant established that the miner had legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[11]

[11] As noted above, the administrative law judge correctly found that, having found the existence of legal pneumoconiosis established, he was not required to separately determine whether the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). *See Kiser v. L & J Equipment Co.*, 23 BLR 1-246, 1-259 n.18 (2006); *Henley v. Cowan & Co.*, 21 BLR 1-147, 1-151 (1999); Decision and Order at 23.

Turning to the issue of the cause of the miner's death, pursuant to 20 C.F.R. §718.205(c), the administrative law judge correctly found that Drs. Rosenberg, Jarboe, Kousa, and Mannino agreed that COPD was a substantially contributing cause of the miner's death.[12] Decision and Order at 26; Claimant's Exhibit 3; Employer's Exhibits 1-4. The administrative law judge rationally discounted the opinions of Drs. Rosenberg and Jarboe because they did not diagnose legal pneumoconiosis. *See Peabody Coal Co. v. Smith*, 127 F.3d 504, 507, 21 BLR 2-180, 2-185-86 (6th Cir. 1997); *Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 1233, 17 BLR 2-97, 2-104 (6th Cir. 1993), *vac'd sub nom., Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev'd on other grounds, Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); *Adams v. Director, OWCP*, 886 F.2d 818, 826, 13 BLR 2-52, 2-63-64 (6th Cir. 1989); Decision and Order at 24-26; Claimant's Exhibit 3; Employer's Exhibits 1-4. The administrative law judge also accorded little weight to Dr. Kousa's opinion, as he did not offer a reasoned diagnosis of pneumoconiosis. Decision and Order at 25-26. By contrast, the administrative law judge found the opinion of Dr. Mannino, that the miner's coal mine dust exposure was a significant factor in causing the miner's death, to be well-reasoned, well-documented, and sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Decision and Order at 26.

Employer makes no specific argument at Section 718.205(c). Employer merely asserts that since the administrative law judge erred in finding legal pneumoconiosis established pursuant to Section 718.202(a)(4), the administrative law judge therefore erred in finding death due to legal pneumoconiosis pursuant to Section 718.205(c). Employer's Brief at 23. We have held that the administrative law judge permissibly accorded the greatest weight to the opinion of Dr. Mannino to find that claimant established the existence of legal pneumoconiosis. We, therefore, hold that the administrative law judge rationally relied on Dr. Mannino's opinion, that because coal mine dust was a significant cause of the miner's COPD, it was therefore a significant cause of his death due to COPD, to find that the miner's death was due in part to legal pneumoconiosis. *See Smith*, 127 F.3d at 507, 21 BLR at 2-185-86. Consequently, we affirm the administrative law judge's finding that claimant established that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c).

[12] The administrative law judge found that the miner's treatment records do not contain a reasoned opinion as to the cause of the miner's death. Decision and Order at 25.

Onset Date

Employer argues that the administrative law judge erred in failing to award benefits from a specific date. Employer identifies no reversible error herein. As employer accurately cites in its brief, the applicable regulation provides:

> Benefits are payable to a survivor who is entitled beginning with the month of the miner's death, or January 1, 1974, whichever is later.

20 C.F.R. §725.503(c); Employer's Brief at 22. In this case, the miner died on January 30, 2004. Director's Exhibit 15. Therefore, as a matter of law, benefits commence from January 1, 2004, and claimant is entitled to benefits from this date. *See Ives v. Jeddo Highland Coal Co.*, 9 BLR 1-167, 1-169 n.2 (1986); *Mihalek v. Director, OWCP*, 9 BLR 1-157, 1-158 (1986).

Accordingly, the administrative law judge's Decision and Order-Award of Survivor's Benefits is affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge