

BRB No. 05-0839 BLA

LEONA M. MATNEY)	
(Widow of RONALD MATNEY))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
OLGA COAL COMPANY)	DATE ISSUED: 08/21/2006
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Robert Weinberger (West Virginia Workers' Compensation Fund), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (04-BLA-5781) of Administrative Law

¹Claimant is the widow of the miner, Ronald Matney. Director's Exhibits 4, 11. The miner filed an initial claim on February 23, 1981. Director's Exhibit 1. This claim was denied by the Department of Labor (DOL) on July 14, 1981 because the evidence did not show that the miner was totally disabled by pneumoconiosis. *Id.* Because the miner did not pursue this claim any further, the denial became final. The miner filed a duplicate claim on November 29, 1990. Director's Exhibit 2. This claim was denied by the DOL on May 13, 1991 because no material change in condition occurred. *Id.* The denial became final because

Judge Thomas M. Burke denying benefits 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 credited the miner with sixteen years of coal mine employment based on the parties' stipulation and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. Although he found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3), the administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Further, the administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) overall. However, the administrative law judge found the evidence insufficient 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 denied benefits.

On appeal, claimant contends that the administrative law judge erred in discounting the medical opinions of Drs. Baker and Alford that the miner suffered from pneumoconiosis. Claimant also challenges the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Worker's Compensation Programs, has declined to participate in this appeal.²

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

Benefits are payable on a survivor's claim filed on or after January 1, 1982 only when the miner's death was due to pneumoconiosis.³ *See* 20 C.F.R. §§718.1, 718.205(c); *Neeley v.*

the miner did not pursue this claim any further. The miner died on January 6, 2002. Director's Exhibits 4, 11. Claimant filed a survivor's claim on September 9, 2002. Director's Exhibit 4.

²Since the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1)-(4), and 20 C.F.R. §718.202(a) overall, are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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

Director, OWCP, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). However, before any finding of entitlement can be made in a survivor's claim, a claimant must establish the existence of pneumoconiosis. See 20 C.F.R. §718.202(a)(1)-(4); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A claimant must also establish that the miner's pneumoconiosis arose out of coal mine employment. See 20 C.F.R. §718.203; *Boyd*, 11 BLR at 1-40-41.

Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). The record consists of a death certificate signed by Dr. Taylor, a hospital discharge summary, and the reports of Drs. Baker, Alford, and Fino. On the death certificate, Dr. Taylor listed coronary disease/vascular heart disease as the immediate cause of the miner's death. Director's Exhibit 11. Dr. Taylor also listed liver failure and renal failure as underlying conditions leading to the immediate cause of the miner death. *Id.* In a January 6, 2002 discharge summary from Iredell Memorial Hospital, Dr. Taylor noted that the miner had end stage liver disease, decompensated liver disease and severe aortic stenosis. Claimant's Exhibit 6. Regarding the medical reports, Drs. Baker⁴ and Alford⁵ opined that

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- (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.
- ...
- (5) 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).

⁴In a report dated February 3, 2005, Dr. Baker opined that the miner's death was hastened by the combination of cardiac disease and pulmonary disease related to coal dust exposure. Claimant's Exhibit 1. Dr. Baker stated that "[i]t would appear that while [the miner] did die of coronary artery disease and vascular heart disease that his lung disease probably increased his oxygenation difficulties and increased his shortness of breath and made it more difficult for him to survive for a long period of time." *Id.*

⁵In an October 16, 2002 report, Dr. Alford opined that the miner's black lung disease contributed to his early demise because it precluded him from being able to receive a liver transplant. Claimant's Exhibit 5. Dr. Alford stated that "[h]ad he been able to receive a liver transplant, he would probably still be living." *Id.*

pneumoconiosis contributed to the miner's death, Claimant's Exhibits 1, 5, while Dr. Fino stated that there was insufficient medical evidence to ascertain the exact cause of the miner's death, Employer's Exhibit 1. Based on his consideration of the evidence, the administrative law judge stated that "[t]here is no support in the record for the conclusion that the miner's pneumoconiosis hastened his death as opined by Drs. Baker and Alford." Decision and Order at 8.

Claimant asserts that the administrative law judge erred in discounting the opinions of Drs. Baker and Alford that pneumoconiosis contributed to the miner's death. The administrative law judge stated that "[w]hile Drs. Baker and Alford opine[d] that pneumoconiosis did hasten the miner's death, their opinions are not supported by any documentation or objective evidence." *Id.* at 9. The administrative law judge further stated that the treatment records from Iredell Memorial Hospital did not mention that the miner had pneumoconiosis. *Id.* The administrative law judge concluded that "[i]t is clear that the miner's death was caused by his heart and liver disease as concluded by those physicians who cared for the miner immediately before his death and not by pneumoconiosis." *Id.* Although the administrative law judge noted that the hospital records did not mention pneumoconiosis in considering the medical evidence at Section 718.205(c), he specifically found the medical evidence sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a). Further, the administrative law judge did not explain why he found that the opinions of the physicians who opined that the miner's death was caused by heart disease and liver disease are better supported by the underlying documentation and objective evidence than the contrary opinions of Drs. Baker and Alford. The Administrative Procedure Act (APA), 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), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Thus, since the administrative law judge did not provide a valid basis for discounting the opinions of Drs. Baker and Alford, that the miner's death was due to pneumoconiosis, we vacate the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis at Section 718.205(c), and remand the case for further consideration of the evidence thereunder. *Wojtowicz*, 12 BLR at 1-165.

On remand, the administrative law judge must consider the validity of the reasoning of the opinions of Drs. Baker and Alford, that pneumoconiosis contributed to the miner's death, in accordance with the APA.⁶ *See generally Tackett v. Cargo Mining Co.*, 12 BLR 1-11

⁶In considering whether the opinions of Drs. Baker and Alford are reasoned and therefore sufficient to establish that pneumoconiosis contributed to the miner's death at 20 C.F.R. §718.205(c), the administrative law judge, on remand, must, *inter alia*, address the equivocal language in their opinions. *See* Claimant's Exhibits 1, 5; *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

(1988)(*en banc*); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985).⁷

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

⁷We note that the administrative law judge mischaracterized Dr. Baker's report by finding that Dr. Baker's diagnosis of "legal" pneumoconiosis was based on a May 30, 1997 pulmonary function study that is not in the record. *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985); Claimant's Exhibit 4.

In addition, the administrative law judge mischaracterized Dr. Alford's report by finding that Dr. Alford offered no support for his opinion that the miner suffered from pneumoconiosis. *Tackett*, 7 BLR at 1-706; Claimant's Exhibit 5.

At the outset, the administrative law judge must consider whether Dr. Baker's opinion, that the miner suffered from a moderate restrictive ventilatory defect caused by coal dust exposure, and Dr. Alford's opinion, that the miner suffered from black lung disease secondary to coal miner's pneumoconiosis, are sufficient to establish the existence of pneumoconiosis, *see* 20 C.F.R. §718.201, as such findings could affect the administrative law judge's consideration of their opinions with respect to the issue of whether pneumoconiosis contributed to the miner's death.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge