BRB Nos. 08-0765 BLA
and 08-0795 BLA

C.S. (o/b/o and Widow of H.S.) Claimant-Respondent v. PEABODY COAL COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 08/21/2009 DECISION and ORDER

Appeal of the Decision and Order Denying Modification and Decision and Order Awarding Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Tab R. Turano (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Denying Modification (05-BLA-0084) and Decision and Order Awarding Benefits (05-BLA-6240) of Administrative Law Judge Alice M. Craft on claims 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).[1] This case involves a miner's claim and a survivor's claim.

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726

The miner filed a claim for benefits on May 2, 1991. Director's Exhibit 1. In a Decision and Order dated March 1, 1993, Administrative Law Judge Bernard J. Gilday, Jr., credited the miner with thirty-three years of coal mine employment,[2] and found that the x-ray evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Director's Exhibit 35. After finding that the miner was entitled to the presumption that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b), Judge Gilday noted that employer did not contest the issue of total disability at 20 C.F.R. §718.204(c) (2000).[3] Judge Gilday, however, found that the evidence did not establish that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000). Accordingly, Judge Gilday denied benefits.

Pursuant to the miner's appeal, the Board affirmed, as unchallenged, Judge Gilday's finding regarding the length of the miner's coal mine employment and his findings pursuant to 20 C.F.R. §§718.202(a)(1), 718.203(b) and 718.204(c) (2000). [*H.S.*] *v. Peabody Coal Co.*, BRB No. 93-1241 BLA (Mar. 22, 1994) (unpub.). The Board, however, vacated Judge Gilday's finding pursuant to 20 C.F.R. §718.204(b) (2000), and remanded the case for further consideration. *Id.*

On remand, Judge Gilday found that the evidence established that the miner's total disability was due to pneumoconiosis. Director's Exhibit 43. Judge Gilday, therefore, awarded benefits. *Id.* Although the Board affirmed Judge Gilday's award of benefits, [*H.S.*] *v. Peabody Coal Co.*, BRB No. 95-0383 BLA (Sept. 25, 1995) (unpub.), the United States Court of Appeals for the Sixth Circuit reversed the Board's Decision and Order, and remanded the case for reconsideration of whether the evidence established that the miner's total disability was due to pneumoconiosis. *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997).

(2009). All citations to the regulations, unless otherwise noted, refer to the amended regulations. Where a former version of a regulation remains applicable, we will cite to the 2000 edition of the Code of Federal Regulations.

[2] The record reflects that the miner's coal mine employment was in Kentucky. 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 (1989)(*en banc*).

[3] The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c) (2000), is now found at 20 C.F.R. §718.204(b), while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b) (2000), is now found at 20 C.F.R. §718.204(c).

On remand, due to Judge Gilday's unavailability, the case was reassigned to Administrative Law Judge Clement J. Kichuk. In a Decision and Order on Remand dated August 7, 1998, Judge Kichuk found that the evidence established that the miner's total disability was due to pneumoconiosis. Director's Exhibit 83. Judge Kichuk, therefore, awarded benefits. *Id.* Pursuant to employer's appeal, the Board affirmed Judge Kichuk's award of benefits. [*H.S.*] *v. Peabody Coal Co.*, BRB No. 98-1593 BLA (Dec. 14, 1999) (unpub.). Employer did not appeal the Board's decision. Employer reimbursed the Black Lung Disability Trust Fund for its payment of interim benefits, and initiated the payment of monthly benefits to the miner. Director's Exhibit 94.

After the miner died on July 25, 2002, Director's Exhibit 50, claimant[4] filed a survivor's claim. Director's Exhibit 139. Employer filed a request for modification in the miner's claim. *See* 20 C.F.R. §725.310 (2000); Director's Exhibit 116. In a Proposed Decision and Order dated October 8, 2003, the district director awarded benefits in the survivor's claim. Director's Exhibit 167. Although employer requested a hearing in the survivor's claim, the request was held in abeyance pending a decision in regard to employer's request for modification in the miner's claim. Director's Exhibit 170. In a Proposed Decision and Order dated July 25, 2005, the district director denied employer's request for modification of the miner's claim. Director's Exhibit 137. The miner's claim and the survivor's claim were consolidated and the cases were forwarded to the Office of Administrative Law Judges for a formal hearing.[5] Director's Exhibits 174, 176.

Administrative Law Judge Alice M. Craft (the administrative law judge) adjudicated the miner's claim and the survivor's claim in separate decisions.[6] In a Decision and Order Denying Modification dated July 25, 2008, the administrative law judge addressed employer's request for modification of the miner's 1991 claim. After crediting the miner with thirty-three years of coal mine employment, the administrative law judge found that the x-ray evidence did not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge, therefore, found that Judge Gilday made a mistake in a determination of fact in finding that the x-ray evidence established the existence of pneumoconiosis. 20 C.F.R. §725.310

[4] Claimant is the surviving spouse of the miner.

[5] By Order dated July 25, 2007, the administrative law judge granted claimant's request for a decision on the record in both claims.

[6] Because the survivor's claim was filed after January 19, 2001, it is subject to the evidentiary limitations of 20 C.F.R. §725.414. *See* 20 C.F.R. §725.2(c). Because the miner's claim was pending on January 19, 2001, it is not subject to the evidentiary limitations. *Id.*

(2000).[7] The administrative law judge also found that the evidence did not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(4). However, the administrative law judge found that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), in the form of chronic obstructive pulmonary disease (COPD) attributable to coal mine dust exposure and cigarette smoking.[8] The administrative law judge also found that the evidence established that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b) and that the miner's total disability was due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge found that the miner was entitled to benefits, and denied employer's request for modification.

In a separate Decision and Order dated July 25, 2008, the administrative law judge addressed claimant's 2002 survivor's claim. The administrative law judge found that the evidence did not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). However, the administrative law judge 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 legal pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits in the survivor's claim.

Employer appeals both the administrative law judge's denial of its request for modification in the miner's claim and the administrative law judge's award of benefits in the survivor's claim. In a combined brief, employer contends 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 contends that the administrative law judge erred in finding that the evidence established that the miner's total disability was due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Employer further argues that the administrative law judge erred in finding that the evidence established that the miner's death was due to legal pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Employer finally contends that the administrative law judge erred in excluding Dr. Weiss's report from the record in the survivor's claim. Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

[7]Although Section 725.310 has been revised, those revisions apply only to claims filed after January 19, 2001.

[8] "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).

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

The Miner's Claim

While employer may establish a basis for modification of the award of benefits by establishing either a change in conditions since the issuance of the previous decision or a mistake in a determination of fact in the previous decision, 20 C.F.R. §725.310(a); *see Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993), the burden of proof to establish a basis for modifying the award of benefits rests with employer.[9] Claimant does *not* have the burden to reestablish his entitlement to benefits. *See Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 139 (1997). Employer, as the proponent of an order terminating an award of benefits, bears the burden of disproving at least one element of entitlement. *Id.*; *see also Branham v. BethEnergy Mines*, 20 BLR 1-27 (1996). In this case, the administrative law judge found that there was a mistake of fact in Judge Gilday's finding that the x-ray evidence established the existence of clinical pneumoconiosis. Decision and Order Denying Modification at 45. However, because the administrative law judge found that the medical opinion evidence established the existence of legal pneumoconiosis, she determined that there was "no mistake in fact in the ultimate finding that [the miner] had pneumoconiosis within the meaning of the Act and the regulations." *Id.* The administrative law judge, therefore, denied employer's request for modification.

Employer contends 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). In considering whether the medical opinion evidence established the existence of legal pneumoconiosis, the administrative law judge considered the opinions of Drs. Taylor, Traughber, Baker, Lane, Anderson, Fino, and

[9] Although an administrative law judge may find a mistake in a determination of fact, the administrative law judge must ultimately determine whether reopening a claim will render justice under the Act. *O'Keeffe, v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 255 (1971). In *Kinlaw v. Stevens Shipping and Terminal Co.*, 33 BRBS 68 (1999), the Board held that "while [an] administrative law judge has the authority to reopen a case based on any mistake in fact, [an] administrative law judge's exercise of that authority is discretionary, and requires consideration of competing equities in order to determine whether reopening the case will indeed render justice." *Kinlaw*, 33 BRBS at 72 (citing *Washington Society for the Blind v. Allison*, 919 F.2d 763, 769 (D.C. Cir. 1991)).

Rosenberg. The administrative law judge found that Dr. Taylor's diagnosis of legal pneumoconiosis, in the form of COPD attributable to both coal mine dust exposure and cigarette smoking, was entitled to additional weight based upon Dr. Taylor's status as the miner's treating physician.[10] Decision and Order Denying Modification at 44; Director's Exhibits 26, 157. The administrative law judge found that Dr. Taylor's opinion was supported by the opinions of Drs. Traughber and Baker. *Id.* at 43-45.

The administrative law judge further found that the opinions of Drs. Anderson, Fino, and Rosenberg, that the miner's chronic obstructive pulmonary disease was due to cigarette smoking and not coal dust exposure, did not credibly rule out the miner's coal dust exposure as a contributing cause of the miner's COPD.[11] Decision and Order Denying Modification at 45. The administrative law judge found that Dr. Anderson's opinion, that the miner's COPD was due entirely to smoking, was not well reasoned, and was, therefore, entitled to little weight. *Id.* The administrative law judge accorded less weight to the opinions of Drs. Fino and Rosenberg, that the miner's COPD was caused by cigarette smoking, because she found that they were not well-reasoned and were inconsistent with the premises underlying the regulations. *Id.* at 44-45.

The administrative law judge, therefore, concluded that:

> [T]he well-documented and well-reasoned opinions of Dr. Taylor, the [m]iner's treating physician, supported by the opinions of Drs. Traughber and Baker, that the [m]iner had legal pneumoconiosis, establish that the [m]iner had legal pneumoconiosis. None of the physicians who offered opinions on behalf of the [e]mployer credibly ruled out the [m]iner's 33 years of coal dust exposure as a contributing cause to the [m]iner's severe obstructive disease. I therefore conclude that the record shows that the [m]iner had legal pneumoconiosis based on the medical opinion evidence.

Decision and Order Denying Modification at 45.

Dr. Traughber's Opinion

Employer initially contends that the administrative law judge mischaracterized Dr. Traughber's opinion. We agree. The administrative law judge found that Dr. Traughber

[10] The administrative law judge noted that Dr. Taylor was the miner's treating physician from 1995 to 2002. Decision and Order Denying Modification at 44-45.

[11] The administrative law judge accurately noted that Dr. Lane did not address the cause of the miner's chronic obstructive pulmonary disease. Decision and Order Denying Modification at 44; Director's Exhibit 29.

diagnosed legal pneumoconiosis in the form of obstructive lung disease due to coal mine dust exposure and cigarette smoking. Decision and Order Denying Modification at 43. Although Dr. Traughber, in his June 20, 1991 report, attributed the miner's clinical pneumoconiosis to his coal dust exposure, he attributed the miner's emphysema to cigarette smoking. Director's Exhibit 8. During an October 26, 1992 deposition, Dr. Traughber reiterated that the miner's emphysema was due to cigarette smoking. Director's Exhibit 33 at 15. Moreover, Dr. Traughber explicitly stated that the miner's emphysema was not caused by his occupational exposure. *Id.* at 24. Consequently, the administrative law judge mischaracterized Dr. Traughber's opinion as supportive of a finding of legal pneumoconiosis. *Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985).

Dr. Taylor's Opinion

Employer next argues that the administrative law judge erred in according greater weight to Dr. Taylor's opinion based upon his status as 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)(5); *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003).[12] Employer argues that the administrative law judge erred in failing to explain her finding that Dr. Taylor's opinion was well-reasoned. Whether a medical report is sufficiently reasoned is for the administrative law judge as the fact-finder to decide. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Although the administrative law judge found that Dr. Taylor's opinion was "well-reasoned," *see* Decision and Order at 45, the administrative law judge erred in not addressing the validity of the specific reasoning that Dr. Taylor provided for his opinion.[13] *See Director, OWCP v. Rowe*, 710 F.2d 251, 255,

[12] In *Williams*, the Sixth Circuit held that there is no rule requiring deference to the opinion of a treating physician in black lung claims. *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003). The court held that the opinions of treating physicians should be given the deference they deserve based upon their power to persuade. *Williams*, 338 F.3d at 513, 22 BLR at 2-647. The court explained that the "case law and applicable regulatory scheme clearly provide that the [administrative law judge] must evaluate treating physicians just as they consider other experts." *Id.*

[13] In a report dated April 14, 1992, Dr. Taylor diagnosed "COPD, predominantly emphysema with components of asthma and bronchitis." Director's Exhibit 26. Dr. Taylor further opined that:

5 BLR 2-99 (6th Cir. 1983). Specifically, the administrative law judge did not address Dr. Taylor's basis for attributing the miner's COPD to his coal dust exposure. The administrative law judge also erred in failing to explain how Dr. Taylor's status as the miner's treating physician provided him with an advantage over the other physicians. *Williams*, 338 F.3d at 513, 22 BLR at 2-647. Before according additional weight to Dr. Taylor's opinion based upon his status as the miner's treating physician, the administrative law judge, on remand, should initially address whether Dr. Taylor's opinion is sufficiently reasoned, and then should weigh Dr. Taylor's opinion, consistent with 20 C.F.R. §718.104(d) and *Williams*.[14] *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

Dr. Baker's Opinion

Employer also contends that the administrative law judge erred in finding that Dr. Baker's opinion supported a finding of legal pneumoconiosis. We disagree. In his February 19, 1992 report, Dr. Baker diagnosed coal workers' pneumoconiosis, chronic obstructive airway disease with severe restrictive ventilatory defect, and bronchitis. Director's Exhibit 28. Dr. Baker further opined that the "[e]tiology of the [miner's] impairment is his combined smoking history and coal dust exposure." *Id.* Based on Dr. Baker's finding that both smoking and coal dust exposure contributed to the miner's

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> [The miner] suffers from a severe respiratory impairment, most of which was related to cigarette smoking; however, one cannot rule out a component, however small, from his exposure to dust in and around the coal mines.

Director's Exhibit 26.

After the miner's death, Dr. Taylor submitted a letter dated June 30, 2003, wherein he stated:

> Although I did not make a formal diagnosis of coal worker's pneumoconiosis, I believe that his exposure to coal mine dust for twenty-five years contributed to his chronic obstructive pulmonary disease, but I do not believe the exposure to coal mine dust contributed significantly to his lung cancer.

Director's Exhibit 157.

[14] On remand, the administrative law judge should also consider the respective qualifications of the physicians. The Sixth Circuit has noted that "a treating physician without the right pulmonary certifications should have his opinions appropriately discounted." *Williams*, 338 F.3d at 513, 22 BLR at 2-647.

pulmonary impairment, the administrative law judge permissibly determined that Dr. Baker diagnosed legal pneumoconiosis.[15] *See* 20 C.F.R. §718.201(a)(2). Consequently, we reject employer's contention that the administrative law judge mischaracterized Dr. Baker's opinion.

The Opinions of Drs. Fino and Rosenberg

Employer also contends that the administrative law judge erred in her consideration of the opinions of Drs. Fino and Rosenberg. In considering Dr. Fino's opinion, the administrative law judge stated:

> The essence of Dr. Fino's opinion is that absent the fibrosis caused by advanced clinical pneumoconiosis, coal dust exposure does not cause clinically significant emphysema. In almost all respects, including selective citations to medical literature, Dr. Fino's arguments parallel his arguments specifically rejected by the Department of Labor in adopting the current regulations. *See* 65 Fed. Reg. 79938-79943 (2000). Dr. Fino has offered no credible reason why the [m]iner's 33 years of coal dust exposure did not contribute to his obstructive disease. I find that his opinion on legal pneumoconiosis is not well reasoned, and is inconsistent with the premises underlying the current regulations. I give it little weight on this issue.

Decision and Order Denying Modification at 44-45.

Employer contends that the administrative law judge erred in finding that Dr. Fino rejected the premises behind the regulations when he excluded the miner's thirty-three years of coal mine employment as a contributing factor to his severe obstructive lung disease. We disagree. An administrative law judge may accord little weight to medical opinions that conflict with the premises underlying the regulations. *See Lewis Coal Co. v. Director, OWCP* [*McCoy*], 373 F.3d 570, 23 BLR 2-184 (4th Cir. 2004); *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995); *see* also *J.O. v. Helen Mining Co.*, BLR , BRB No. 08-0671 BLA (June 24, 2009) (recognizing that a determination of whether a medical opinion is supported by accepted scientific evidence, as determined by the Department of Labor, is a valid criterion in deciding whether to credit the opinion). The administrative law judge reasonably considered the comments to the regulations regarding the causal connection between coal dust exposure and obstructive lung disease, and, on this record, reasonably concluded that Dr. Fino rejected the premise behind the regulations that exposure to coal dust can cause clinically

[15] We note that Dr. Rosenberg, in reviewing Dr. Baker's report, similarly concluded that Dr. Baker diagnosed clinical and legal pneumoconiosis. Employer's Exhibit 1 at 35.

significant obstructive lung disease, in the absence of fibrosis caused by advanced clinical pneumoconiosis.[16] *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 24 BLR 2-97 (7th Cir. 2008).

Employer also contends that the administrative law judge erred in her consideration of Dr. Rosenberg's opinion. The administrative law judge found that Dr. Rosenberg's approach to the issue of legal pneumoconiosis was based largely on a selective discussion of the medical literature that was "speculative, lacked credibility, and revealed his bias, undermining the credibility of his opinion." Decision and Order Denying Modification at 45. The administrative law judge, therefore, found that Dr. Rosenberg's opinion on legal pneumoconiosis was not well-reasoned. *Id.*

Contrary to the administrative law judge's characterization, Dr. Rosenberg's opinion regarding the cause of the miner's obstructive lung disease is not "speculative." Dr. Rosenberg unequivocally opined that the miner suffered from COPD caused by his cigarette smoking, and not coal dust exposure. Director's Exhibit 134; Employer's Exhibit 1 at 38.

Moreover, contrary to the administrative law judge's characterization, Dr. Rosenberg provided specific reasons relating to the miner's pattern of impairment in this case for attributing the miner's COPD to his cigarette smoking and not coal dust exposure. Dr. Rosenberg explained how a physician can ascertain the etiology of a miner's obstructive lung disease in individual cases.[17] Dr. Rosenberg noted that the following factors are useful in determining the etiology of a miner's obstructive lung disease: (1) the FEV1/FVC ratio; (2) the presence of air trapping; and (3) the presence of

[16] The record reflects that Dr. Fino emphasized medical studies that he stated have correlated the amount of emphysema resulting from coal dust with the amount of fibrosis within the lung. Employer's Exhibit 2 at 43. Further, Dr. Fino relied upon a study finding "no convincing evidence to support the view that disabling emphysema other than irregular or scar emphysema associated with some cases of [progressive massive fibrosis] is more common in coal miners than in the population at large." Employer's Exhibit 2 at 41. The Department of Labor (DOL), however, has recognized that "epidemiological studies have shown that coal miners have an increased risk of developing COPD." 65 Fed. Reg. 79939 (Dec. 20, 2000). The DOL has also recognized that, "[e]ven in the absence of smoking, coal mine dust exposure is clearly associated with clinically significant airways obstruction and chronic bronchitis." 65 Fed. Reg. 79940 (Dec. 20, 2000).

[17] Dr. Rosenberg acknowledged that, in addition to cigarette smoking, coal dust exposure can cause obstructive lung disease. Employer's Exhibit 1 at 17-19.

CO2 retention. *Id.* at 18-19. Dr. Rosenberg applied these factors to the miner's particular case, stating that:

> With respect to [the miner], it should be appreciated that he had a marked reduction of FEV1%, combined with increased lung volumes of 115% of predicted and marked air trapping, as was noted by his RV measurement of 285% of predicted. In conjunction with this, he had marked CO2 retention. This is not the physiologic pattern caused by past coal dust exposure. Rather, it [is] totally classic for that related to COPD caused by cigarette smoking. Just as [the miner's] lung cancer was related to cigarette smoking, so was his COPD.

Director's Exhibit 134 at 11.

Because Dr. Rosenberg provided specific, objective reasons for his opinion regarding the etiology of the miner's COPD, the administrative law judge mischaracterized his opinion.[18] *Tackett*, 7 BLR at 1-706.

In light of the above-referenced errors, we 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, when considering whether the medical opinion evidence establishes the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge 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 Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

In light of our decision to vacate the administrative law judge's finding of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), we also vacate her finding that the evidence established that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), and instruct her to reconsider this issue, if necessary, on remand.

[18] The administrative law judge also failed to provide any support for her finding that Dr. Rosenberg's opinion "revealed his bias." Decision and Order Denying Modification at 45; *see Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*).

The Survivor's Claim

Because this survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *See* 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Where pneumoconiosis is not the cause of death, a miner's death will be considered to be due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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); *see Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *see also Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).

Because claimant's survivor's claim is subject to the evidentiary limitations set forth at 20 C.F.R. §725.414, the administrative law judge considered a more limited set of evidence in her adjudication of this claim. The administrative law judge considered the opinions of Drs. Taylor, Traughber, Baker, Fino, and Rosenberg. For the same reasons that she articulated in her adjudication of the miner's claim, the administrative law judge found that the medical opinion evidence established the existence of legal pneumoconiosis:

> [T]he well-documented and well-reasoned opinions of Dr. Taylor, the [m]iner's treating physician, supported by the opinions of Drs. Traughber and Baker, that the [m]iner had legal pneumoconiosis, establish that the [m]iner had legal pneumoconiosis. Neither [Dr. Fino or Rosenberg] credibly ruled out the [m]iner's 33 years of coal dust exposure as a contributing cause to the [m]iner's severe obstructive disease. I therefore conclude that the [c]laimant has established that the [m]iner had legal pneumoconiosis based on the medical opinion evidence.

Decision and Order Awarding Benefits at 36-37.

Employer challenges the administrative law judge's finding of legal pneumoconiosis based on the same arguments that it made in the miner's claim. We, therefore, vacate the administrative law judge's finding of legal pneumoconiosis in the survivor's claim for the same reasons set out in the miner's claim.

In light of our decision to vacate the administrative law judge's finding of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), we also vacate her finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), and instruct her to reconsider this issue, if necessary, on remand.

Exclusion of Evidence in the Survivor's Claim

Employer finally contends that the administrative law judge erred in not admitting Dr. Weiss's November 15, 2004 report into the record. In the survivor's claim, employer submitted the medical reports of two pulmonologists, Drs. Rosenberg and Fino, as its two affirmative medical reports. 20 C.F.R. §725.414(a)(3)(i). However, employer argued that "good cause" existed to admit Dr. Weiss's additional report based upon the doctor's expertise in oncology. 20 C.F.R. §725.456(b)(1). Employer argued that:

> [Employer] submitted medical reports by Drs. Fino, Rosenberg, and Weiss addressing the cause of the [the miner's] death. Each of these opinions should be considered by the Court. Each of the three reports was admitted into evidence without objection. Moreover, given the particular nature of the medical dispute in the survivor's case, which involves the impact of [the miner's] COPD and cancer upon his demise, medical opinions from experts on both diseases --- pulmonologists and oncologists --- are necessary to gather a complete picture of [the miner's] medical condition. [The miner's] treatment involved medical care from experts in both fields, and the litigation of this claim should be no different. Good cause exists, therefore, for the submission of the oncologist's report pursuant to 20 C.F.R. §725.414(a)(1).

Employer's Brief on the Merits at 21 n.3.

The administrative law judge, noting that employer "could have met its goal of supporting its position with opinions from two medical specialties and still complied with [the evidentiary limitations] by choosing only one pulmonologist's report," found that employer had not demonstrated good cause for the admission of an additional medical report. Decision and Order Awarding Benefits at 2. An administrative law judge is afforded broad discretion in dealing with procedural matters. *See Clark*, 12 BLR at 1-153. Under the facts of this case, we hold that the administrative law judge did not abuse her discretion in finding that employer did not establish good cause to admit Dr. Weiss's medical report into the record.[19]

[19] Employer argues that it never made any selection as to which of the three medical reports should be admitted. Employer's contention lacks merit. In its Evidence Summary Form, employer indicated that its two affirmative medical reports were those of Drs. Fino and Rosenberg, and that Dr. Weiss's report was "[s]ubmitted for good cause." In its Brief on the Merits submitted to the administrative law judge, employer again indicated that "[g]ood cause existed for the submission of the oncologist's report . . . ." Employer's Brief on the Merits at 21 n.3.

Accordingly, the administrative law judge's Decision and Order Denying Modification in the miner's claim and her Decision and Order Awarding Benefits in the survivor's claim are affirmed in part and vacated in part, and the 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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JUDITH S. BOGGS
Administrative Appeals Judge