BRB No. 08-0792 BLA

G.L. (o/b/o and Widow of R.L.) Claimant-Petitioner v. OLD BEN COAL COMPANY and ZEIGLER COAL HOLDING COMPANY Employer/Carrier- Respondents SAFECO INSURANCE COMPANY Intervenor DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 08/26/2009 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jeffrey Tureck, Administrative Law Judge, Department of Labor.

Darrell Dunham and Tara Dahl (Darrell Dunham & Associates), Carbondale, Illinois, for claimant.

W. William Prochot (Greenberg Traurig, LLP), Washington, D.C., for employer.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Decision and Order Denying Benefits of Administrative Law Judge Jeffrey Tureck (the administrative law judge) rendered on a miner's subsequent claim[2] and a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act). The administrative law judge credited the miner with fifteen years of coal mine employment,[3] and adjudicated both claims pursuant to the regulations contained in 20 C.F.R. Part 718. In the miner's claim, the administrative law judge found that the evidence established the existence of a totally disabling pulmonary impairment under 20 C.F.R. §718.204(b)(2), and that claimant therefore established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). On the merits of entitlement, the administrative law judge determined that claimant did not establish that the miner had either simple or complicated pneumoconiosis pursuant to 20 C.F.R. §§718.202(a), 718.304, or that his totally disabling respiratory impairment was due to pneumoconiosis at 20 C.F.R. §718.204(c). In the survivor's claim, the administrative law judge found that the evidence did not establish the existence of either simple or complicated pneumoconiosis under 20 C.F.R. §§718.202(a), 718.304, or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).[4] Accordingly, the

[1] Claimant is the widow of the miner, R.L.

[2] The miner's initial claim, filed on November 30, 1980, was denied by an administrative law judge on April 30, 1985, for failure to establish total disability. Director's Exhibit 1. The record does not reflect that the miner took any further action until filing the instant claim for benefits on September 9, 2002. Director's Exhibit 3. The miner died on September 26, 2002, while his claim was pending before the district director. Director's Exhibit 13.

Claimant filed the instant claim for survivor's benefits on January 27, 2003. Director's Exhibit 8.

[3] The law of the United States Court of Appeals for the Seventh Circuit is applicable as the miner was employed in the coal mining industry in Illinois. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

[4] The administrative law judge did not make separate, specific findings under the relevant sections of the regulations in either claim. However, because the administrative law judge credited Dr. Naeye's opinion, that the miner did not have either simple or complicated pneumoconiosis, as most persuasive in both claims, we evaluate the administrative law judge's decision as having found that claimant did not establish the existence of simple pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (4), or the

administrative law judge denied benefits in both the miner's claim and the survivor's claim.

On appeal, claimant contends that the administrative law judge erred in his consideration of the relevant evidence in both claims under 20 C.F.R. §§718.202(a)(2) and (4), 718.304(b), 718.204(c), and 718.205(c). Employer responds, urging the Board to affirm the denial of benefits in both the miner's claim and the survivor's claim. The Director, Office of Workers' Compensation Programs, has not filed a response in this appeal.[5] Claimant has filed a reply brief reiterating her contentions.

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).

The Miner's Claim for Benefits

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

20 C.F.R. §718.202(a)(2): Autopsy Evidence

Relevant to the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(2), the record in the miner's claim contains the autopsy report of Dr. Johnson and the medical opinions of Drs. Naeye and Perper, both of which contained pathology slide reviews. Based on his microscopic findings, Dr. Johnson diagnosed "moderate to severe coal

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existence of complicated pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(3), 718.304.

[5] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established the existence of a totally disabling respiratory impairment under 20 C.F.R. §718.204(b), and, therefore, established a change in an applicable condition of entitlement in the miner's claim pursuant to 20 C.F.R. §725.309(d). *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

workers' pneumoconiosis" and stated that the evidence of black lung or coal workers' pneumoconiosis included many areas of nodular fibrosis with interstitial fibrosis and areas of chronic inflammation, as well as honeycombing of the lung tissue in areas with dilated bronchiolar units and mucous and neutrophils in some bronchiolar units, especially on the left side. Claimant's Exhibit 1 at 3. Dr. Perper diagnosed "[c]oal workers' pneumoconiosis, primarily of the interstitial pulmonary fibrosis type, with macules, micronodules and two adjacent macronodules measuring in aggregate more than 2.0 cm and consistent with complicated coal workers' pneumoconiosis." Director's Exhibit 50 at 27. Dr. Perper additionally stated that he saw silica crystals in the areas of fibrosis. Claimant's Exhibit 11 at 19. By contrast, Dr. Naeye opined that the miner had idiopathic pulmonary fibrosis, rather than simple or complicated pneumoconiosis, because tiny silica crystals are the only component of coal dust that causes fibrosis, and there was a "near absence" of such crystals in the miner's lungs. Employer's Exhibit 18 at 28, 54. In a supplemental report, Dr. Perper responded to Dr. Naeye's report, stating that the medical literature does not support Dr. Naeye's claim that silica crystals are the only fibrogenic component in coal dust. Dr. Perper cited studies that he stated had established that iron and silicates contained in coal dust also cause fibrosis. Claimant's Exhibit 12 at 3, 7-8. Dr. Perper further noted that the Report of the American Thoracic Society states that idiopathic pulmonary fibrosis is not an appropriate diagnosis when the patient has had prior exposure to toxic substances that can cause pulmonary fibrosis. Director's Exhibit 50 at 22.

The administrative law judge resolved the conflicts in the pathology evidence based on the physicians' respective credentials. The administrative law judge determined that, although both Drs. Naeye and Perper are "highly qualified pathologists," Dr. Naeye's *curriculum vitae* contained many published articles specific to coal workers' pneumoconiosis, whereas none of the published articles listed on Dr. Perper's resume related to pneumoconiosis or other lung diseases. Decision and Order at 5. The administrative law judge therefore determined that "[t]here is no basis in this record for finding that Dr. Perper is more knowledgeable regarding the diagnosis of pneumoconiosis by pathology evidence than Dr. Naeye." *Id*. at 6. Because Drs. Naeye and Perper reached opposite conclusions based on their review of the lung slides, the administrative law judge determined that Dr. Naeye's pathology findings were entitled to greater weight than those of Dr. Perper. *Id*. Further, because Dr. Johnson's credentials were not contained in the record, and because Dr. Johnson's autopsy report did not include a macroscopic description of the lungs as "required" by 20 C.F.R. §718.106(a), the administrative law judge determined that "Dr. Johnson's autopsy findings have virtually no probative value as compared to the autopsy findings of Dr. Naeye." *Id*. at 7. The administrative law judge therefore concluded that the pathology evidence did not establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2).

Initially, claimant asserts that the administrative law judge failed to account for the biases that Dr. Naeye has in favor of the coal companies when he weighed Dr. Naeye's report. Claimant's Brief at 9. We reject claimant's assertion, as claimant does not identify any evidence of bias on Dr. Naeye's part. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-35, 1-36 (1991)(*en banc*).

Claimant additionally contends that the administrative law judge erred in crediting Dr. Naeye's conclusions over the contrary conclusions of Dr. Perper pursuant to 20 C.F.R. §718.202(a)(2), because the administrative law judge did not assess the probative value of the pathologists' respective analyses or the quality of their comparative reasoning. Claimant's Brief at 23. We agree.

As claimant asserts, Dr. Naeye's conclusions, that the miner's lung fibrosis was unrelated to coal dust exposure was based in part on Dr. Naeye's belief that silica is the only component of coal mine dust that causes fibrosis, and in Dr. Naeye's opinion, tiny silica crystals were absent from the miner's lung tissue. As claimant further asserts, the literature that Dr. Naeye offered in support of this premise was an article that he co-authored in 1979, whereas Dr. Perper, whom the administrative law judge also found to be well-qualified, stated that the article does not support Dr. Naeye's opinion. Moreover, Dr. Perper stated that two peer-reviewed articles, issued in 2000 and 2002, demonstrate that coal dust contains other fibrogenic agents such as bio-available iron and amorphous silica and silicates. Claimant's Exhibit 12 at 7-9. Although Dr. Naeye responded to Dr. Perper's criticisms, the administrative law judge did not address these criticisms or resolve the conflict in the medical opinions. Therefore, because the administrative law judge did not provide a medical reason for preferring Dr. Naeye's opinion over that of Dr. Perper, we must vacate the administrative law judge's finding at 20 C.F.R. §718.202(a)(2), and remand this case for further consideration. *See Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484, 22 BLR 2-35, 2-37, (7th Cir. 2007); *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 468-69, 22 BLR 2-311, 2-318 (7th Cir. 2001). On remand, the administrative law judge should consider the respective analyses and quality of the physicians' comparative reasoning in addition to their qualifications. Further, the administrative law judge must render an explicit finding under 20 C.F.R. §718.202(a)(2), and explain his credibility determinations.

Claimant additionally contends that the administrative law judge erred in failing to resolve the conflict in the opinions of Drs. Naeye and Perper as to whether a darkened room and "microscope magnification x1000" are necessary to see toxic silica. Claimant further asserts that Dr. Naeye's report and deposition testimony are inconsistent on this issue. Claimant's Brief at 9-10. Because we remand this case for further consideration of the pathology evidence under 20 C.F.R. §718.202(a)(2), on remand, the administrative law judge must consider whether Dr. Naeye's opinion is consistent and whether any inconsistency undermines his conclusions.

Claimant additionally asserts that the administrative law judge erred in excluding Dr. Johnson's autopsy protocol from consideration because Dr. Johnson's report did not contain a macroscopic description of the lungs and because his credentials are not of record. Claimant points out that an autopsy report cannot be mechanically precluded from consideration solely for failure to comply with the quality standards of 20 C.F.R. §718.106, because the standards are not mandatory. Claimant's Brief at 16; *see Dillon v. Peabody Coal Co.*, 11 BLR 1-113, 114-15 (1988). Claimant further states that the regulations do not require that an autopsy prosector's qualifications be submitted; therefore, by "refusing to consider the autopsy report," the administrative law judge "improperly placed requirements on the claimant that are not mandated under the regulations." Claimant's Brief at 17.

Although claimant correctly asserts that the quality standards at 20 C.F.R. §718.106 are not mandatory, contrary to claimant's assertions, the record does not reflect that the administrative law judge mechanically excluded, or refused to consider, Dr. Johnson's autopsy report. Rather, the administrative law judge considered the report but found its conclusions to be unpersuasive because Dr. Johnson's credentials were not of record. Decision and Order at 7; *see generally Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-302 (2003); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993). As it is the parties' burden to establish a doctor's qualifications, we reject claimant's assertion of error. *See Rankin v. Keystone Coal Mining Corp.*, 8 BLR 1-54, 1-56 (1985). However, because the administrative law judge found that "Dr. Johnson's autopsy findings have virtually no probative value as compared to the autopsy findings of Dr. Naeye," Decision and Order at 7, and we have vacated the administrative law judge's credibility determination with respect to the pathology findings of Dr. Naeye, we direct the administrative law judge, on remand, to consider Dr. Johnson's autopsy report when he reconsiders the conflicting pathology opinions of Drs. Naeye and Perper under 20 C.F.R. §718.202(a)(2). *See Stalcup*, 477 F.3d at 484, 22 BLR at 2-37; *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318.

20 C.F.R. §718.202(a)(4): Medical Opinion Evidence

Relevant to 20 C.F.R. §718.202(a)(4), the record contains the medical opinions of Drs. Naeye, Perper, Tuteur, Renn, and Wiot, and the treatment records of Drs. Dave, Muniz, Sanjabi, and Bruce. Drs. Perper, Muniz, and Sanjabi diagnosed coal workers' pneumoconiosis. Director's Exhibit 50; Claimant's Exhibits 3, 5, 11, 12. Dr. Dave opined that the miner's condition was "consistent with COPD and black lung" but that further medical studies were needed. Claimant's Exhibit 5 at 124. By contrast, Drs. Naeye, Tuteur, Renn and Wiot opined that the miner did not have pneumoconiosis. Director's Exhibits 32, 37, 39; Employer's Exhibits 14, 18. Dr. Bruce did not state an opinion as to the existence of pneumoconiosis. Claimant's Exhibit 3.

Considering this evidence, the administrative law judge credited the opinion of Dr. Naeye, as supported by the opinions of Drs. Tuteur, Renn, and Wiot, over the contrary opinions of record, in light of Dr. Naeye's extraordinary expertise in the field of coal workers' pneumoconiosis. Further, the administrative law judge found that the opinions of Drs. Muniz and Sanjabi were entitled to diminished weight given the physicians' lack of expertise and the variability of their diagnoses. In support of his finding that the opinions of Drs. Muniz and Sanjabi were inconsistent, the administrative law judge observed that Dr. Muniz diagnosed the miner with coal workers' pneumoconiosis on some occasions, interstitial lung disease/pulmonary fibrosis on other occasions, and idiopathic pulmonary fibrosis on one occasion. Decision and Order at 7; Claimant's Exhibit 3, 5. With regard to Dr. Sanjabi, the administrative law judge observed that Dr. Sanjabi diagnosed pneumoconiosis on February 21, 2002, and pulmonary fibrosis on May 8, 2002 and July 24, 2002. Further, the administrative law judge found Dr. Dave's opinion to be "too preliminary and uncertain to constitute a probative diagnosis of pneumoconiosis." Decision and Order at 8. Thus, the administrative law judge concluded that the medical opinion evidence did not establish the existence of pneumoconiosis.

Claimant asserts that the administrative law judge erred in discounting Dr. Muniz's opinion for the reasons provided. Claimant additionally asserts that the administrative law judge erred in failing to consider Dr. Muniz's opinion in light of the treating physician criteria at 20 C.F.R. §718.104(d). We disagree.

Although claimant accurately asserts that Dr. Muniz stated at his deposition that he had experience treating miners for coal workers' pneumoconiosis and that his diagnosis of pulmonary fibrosis was consistent with both his diagnosis of idiopathic pulmonary fibrosis and coal workers' pneumoconiosis, Claimant's Brief at 14; Claimant's Exhibit 3 at 11, the administrative law judge, as the finder of fact, permissibly determined that Dr. Muniz's diagnosis of idiopathic pulmonary fibrosis, a pulmonary fibrosis of unknown origin, is inconsistent with his diagnosis of coal workers' pneumoconiosis, a pulmonary fibrosis caused by exposure to coal dust. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). Therefore, the administrative law judge acted within his discretion in discounting Dr. Muniz's medical opinion.

We find merit, however, in claimant's assertion that the administrative law judge erred in discounting Dr. Sanjabi's opinion as inconsistent. The administrative law judge did not explain how Dr. Sanjabi's diagnosis of interstitial pulmonary fibrosis was inconsistent with his diagnosis of coal workers' pneumoconiosis, where there is a consensus among the medical experts that the miner suffered from severe pulmonary fibrosis, and where the conflict in the physicians' opinions goes to the etiology of the miner's fibrosis. Consequently, we vacate the administrative law judge's determination

to discount Dr. Sanjabi's opinion. On remand, the administrative law judge must reconsider whether Dr. Sanjabi's opinion is reasoned and documented and render an explicit finding under 20 C.F.R. §718.202(a)(4). In so doing, the administrative law judge must resolve the conflicts in the medical opinion evidence, *see Stalcup*, 477 F.3d at 484, 22 BLR at 2-37; *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318, and address whether Dr. Sanjabi's opinion is entitled to increased weight in light of his status as the miner's treating physician under 20 C.F.R. §718.104(d). 20 C.F.R. §718.104.

Claimant additionally asserts that the administrative law judge did not explain why the opinions of Drs. Bruce and Dave[6] were not entitled to increased weight in light of their status as the miner's treating physicians under Section 718.104(d). Claimant's Brief at 15. However, the record reflects that Dr. Bruce did not state an opinion as to the presence or absence of pneumoconiosis. Employer's Exhibit 1 at 211. Further, claimant does not challenge the administrative law judge's finding that Dr. Dave's opinion, that the miner's condition was "consistent with COPD and black lung" but that further medical studies were needed, was "too preliminary and uncertain to constitute a probative diagnosis of pneumoconiosis." Decision and Order at 8; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We therefore reject claimant's allegation of error.

20 C.F.R. §718.304: Complicated Pneumoconiosis

Section 411(c)(3) of the Act, implemented by Section 718.304 of the regulations, provides that there is an irrebuttable presumption of total disability due to pneumoconiosis if the miner suffers from a chronic dust disease of the lung which, (A) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (C) when diagnosed by other means, is a condition that would yield results equivalent to (A) or (B). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304, the administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick*, 16 BLR at 1-33-34.

[6] Claimant does not refer to these physicians by name or summarize their opinions or the administrative law judge's findings regarding these physicians' opinions. Rather, claimant briefs her assertions of error with regard to Drs. Muniz and Sanjabi, then concludes that the administrative law judge failed to address, under 20 C.F.R. §718.104(d), the length, frequency, and extent of treatment provided by "four physicians" who treated the miner. Claimant's Brief at 15.

Drs. Perper and Naeye were the only physicians of record in the miner's claim to state an opinion as to the presence or absence of complicated pneumoconiosis. Dr. Perper diagnosed complicated pneumoconiosis based on the presence of lesions greater than two centimeters in the miner's lungs with adjacent interstitial fibro-anthracosis. Director's Exhibit 50 at 28, 36; Claimant's Exhibits 11, 12. Although Dr. Naeye observed the presence of lesions that he stated were large enough to qualify as complicated pneumoconiosis, he opined that the miner did not have complicated pneumoconiosis because the lesions were not associated with toxic silica, which, according to Dr. Naeye, is the only fibrogenic component of coal dust. Employer's Exhibit 18 at 39-40. As mentioned previously, in response to Dr. Naeye's statement that silica is the only fibrogenic component of coal dust, Dr. Perper pointed to peer-reviewed studies, demonstrating that iron and silicates are also fibrogenic components in coal dust. Claimant's Exhibit 12 at 7-9.

The administrative law judge credited Dr. Naeye's opinion over Dr. Perper's contrary opinion, because Dr. Naeye had published many articles pertaining to coal workers' pneumoconiosis, while Dr. Perper had not published any articles on the subject. Decision and Order at 7. The administrative law judge, however, did not assess the probative value of the pathologists' opinions in light of their underlying rationales.

Claimant asserts that the administrative law judge failed to consider Dr. Perper's opinion that the autopsy slides revealed complicated pneumoconiosis, in conjunction with Dr. Naeye's statement that some of the lesions contained in the miner's lungs were large enough to qualify as complicated pneumoconiosis. Claimant additionally asserts that the presence of large lesions in the miner's lung tissue combined with the presence of simple pneumoconiosis establishes the existence of complicated pneumoconiosis. Claimant's Brief at 20-21.

Contrary to claimant's assertion, the administrative law judge specifically noted that Dr. Naeye acknowledged the presence of large lesions, which would have been complicated pneumoconiosis if they were related to coal dust. Decision and Order at 6 n.7. Further, contrary to claimant's assertion, to establish invocation of the irrebuttable presumption based on autopsy evidence, claimant bears the burden of establishing massive lesions in the miner's lungs. 20 C.F.R. §718.304(b); *see generally Trent v. Director, OWCP*, 11 BLR 1-26 (1987). However, because the administrative law judge did not address the medical rationale underlying the pathologists' conflicting conclusions, we vacate his finding that the pathology evidence did not establish the existence of complicated pneumoconiosis under 20 C.F.R. §718.304(b), and remand this case for further consideration. *See Stalcup*, 477 F.3d at 484, 22 BLR at 2-37; *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318. On remand, the administrative law judge should render a finding under 20 C.F.R. §718.304(b), separate from his finding at 20 C.F.R. §718.202(a)(2). In so doing, the administrative law judge must assess whether the

pathology reports of Drs. Naeye and Perper are reasoned and documented and must explain his credibility determinations. Further, if the administrative law judge finds that the evidence is supportive of a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(b), he must then assess whether the record as a whole establishes the existence of complicated pneumoconiosis pursuant to 20 C.F.R. § 718.304(a)-(c).

20 C.F.R. §718.204(c): Disability Causation

In light of our determination to vacate the administrative law judge's findings under 20 C.F.R. §§718.202(a)(2), (4), we additionally vacate the administrative law judge's disability causation finding at 20 C.F.R. §718.204(c). If reached on remand, the administrative law judge must again weigh all relevant evidence and determine whether pneumoconiosis was a substantially contributing cause of the miner's total disability pursuant to 20 C.F.R. §718.204(c).[7]

The Widow's Claim for Benefits

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 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (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, the irrebuttable presumption at 20 C.F.R. §718.205(c)(3) is applicable, or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1)-(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). Failure to establish any one of these elements precludes entitlement. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

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[7] Section 718.204(c)(1) provides, in relevant part, that pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:

> (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
>
> (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1)(i),(ii).

The only difference in the evidence between the miner's claim and the widow's claim is that Dr. Renn's opinion in the miner's claim was replaced by Dr. Caffrey's opinion[8] in the widow's claim. Finding Dr. Naeye to be the best qualified physician of record to render an opinion as to the presence or absence of pneumoconiosis, the administrative law judge credited Dr. Naeye's opinion, as supported by Dr. Caffrey's opinion, over the contrary conclusions of Dr. Perper.

Claimant raises the same allegations of error in the widow's claim as she raises in the miner's claim.[9] Claimant additionally asserts that the administrative law judge erred in crediting Dr. Caffrey's report as supportive of Dr. Naeye's report.

With respect to claimant's assertion that the administrative law judge erred in crediting Dr. Naeye's opinion, as supported by Dr. Caffrey's opinion, over the contrary opinions of record based on the physicians' credentials alone, we agree. As this issue is identical to the issue raised in the miner's claim, we vacate the administrative law judge's findings for the same reasons provided in the miner's claim. On remand, the administrative law judge must consider the respective analyses and quality of the physicians' comparative reasoning in addition to their qualifications. *Stalcup*, 477 F.3d at 484, 22 BLR at 2-37; *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318. The administrative law judge must make explicit findings under 20 C.F.R. §§718.202(a)(2), (4), and 718.304, and explain his credibility determinations. In so doing, if the administrative law judge again finds Dr. Caffrey's opinion supportive of Dr. Naeye's opinion, the administrative law judge must explain this finding in light of the fact that Dr. Caffrey found pathologic evidence of simple silicosis and Dr. Naeye did not.

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[8] Dr. Caffrey provided a consultative medical report based on his review of the autopsy slides and some of the medical evidence of record. Employer's Exhibit 7. Dr. Caffrey was deposed on May 11, 2004. Employer's Exhibit 8. Dr. Caffrey stated that the autopsy slides did not show any changes of simple or complicated coal workers' pneumoconiosis, but they did show simple silicosis, which Dr. Caffrey opined was caused by the miner's coal dust exposure. Employer's Exhibits 7, 8. Dr. Caffrey further stated that the miner had pathologic evidence of simple silicosis, but did not have clinical evidence of coal workers' pneumoconiosis or simple silicosis. Additionally, Dr. Caffrey opined that the miner's simple silicosis did not cause his pulmonary disability or hasten his death, and that coal dust exposure during coal mine employment did not cause or contribute to the miner's pulmonary fibrosis or death. Employer's Exhibit 8 at 23.

[9] Because claimant does not point to any evidence of bias, we reject her assertion that the administrative law judge failed to account for the biases that Drs. Naeye and Caffrey have in favor of the coal companies. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-35, 1-36 (1991)(*en banc*); Claimant's Brief at 9.

20 C.F.R. §718.205(c): Death Causation

In light of our determination to vacate the administrative law judge's findings under 20 C.F.R. §§718.202(a)(2), (4), we vacate the administrative law judge's finding as to death causation at 20 C.F.R. §718.205(c). If reached on remand, the administrative law judge must again weigh all relevant evidence and determine whether pneumoconiosis was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(c).

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 consideration consistent with this opinion.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge