

BRB No. 98-1470 BLA

GLORIA M. CANTRELL	)	
(Widow of JAMES E. CANTRELL)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EASTERN COAL CORPORATION	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
and	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Lawrence L. Moise III (Vinyard and Moise), Abingdon, Virginia, for claimant.

Lois A. Kitts (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order on Remand Denying Benefits (96-BLA-0952) of Administrative Law Judge Jeffrey Tureck 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 case is before the Board for the second time. On

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<sup>1</sup> Claimant is Gloria M. Cantrell, surviving spouse of the miner, James E. Cantrell, who died on April 3, 1995. Director's Exhibit 5.

remand, the administrative law judge found that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).<sup>2</sup> Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's consideration of the medical opinions of record pursuant to Section 718.202(a)(4). Specifically, claimant challenges the administrative law judge's consideration of the opinions of Drs. Byers, Robinette, Chandler and Branscomb. Additionally, claimant contends that the administrative law judge failed to comply with the Board's remand instructions because he failed to consider the opinion of Dr. Greene. Employer, in response, asserts that the Decision and Order on Remand of the administrative law judge is supported by substantial evidence, and accordingly, urges affirmance. The Director, Office of Workers' Compensation Programs has filed a letter indicating that he will not respond to the instant appeal.<sup>3</sup>

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<sup>2</sup> The Board previously affirmed the administrative law judge's findings that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(2) as they were unchallenged on appeal, and noted that the presumptions at Section 718.202(a)(3) were inapplicable based on the evidence in this case, and that the administrative law judge found "at least" thirty years of coal mine employment pursuant to the parties stipulation. *Cantrell v. Eastern Coal Corp.*, BRB No. 97-0773 BLA (Feb. 24, 1997).

<sup>3</sup> Inasmuch as claimant does not challenge the administrative law judge's findings with respect to the opinions of Drs. Michos, Director's Exhibit 10, and Dr. Fino, Director's Exhibit 43; Employer's Exhibit 7, these findings are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Coal Co.*, 6 BLR 1-710 (1983).

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

Claimant initially challenges the administrative law judge's failure to comply with the Board's remand instructions. The Board remanded the case to the administrative law judge, *inter alia*, for him to reconsider the medical opinion of Dr. Greene at Section 718.202(a)(4) as Dr. Greene found that the miner had a severe chronic obstructive pulmonary disease secondary to coal mine employment. Director's Exhibit 9. *Cantrell v. Eastern Coal Corp.*, BRB No. 97-0773 BLA (Feb. 24, 1997). A review of the administrative law judge's Decision and Order on Remand indicates that the administrative law judge failed to consider Dr. Greene's opinion in his analysis of the evidence. We vacate, therefore, the administrative law judge's determination pursuant to Section 718.202(a)(4) and we remand the case for the administrative law judge to consider Dr. Greene's opinion.

Claimant also challenges the administrative law judge's consideration of the opinion of Dr. Byers, the miner's treating physician. Claimant contends that it was error for the administrative law judge to accord little weight to Dr. Byers's opinion that the miner has pneumoconiosis because Dr. Byers relied on positive x-ray interpretations when the weight of the x-ray interpretation evidence was found to be negative. We agree. A physician's opinion may not be discredited simply because it is based on an x-ray interpretation which is outweighed by other x-ray interpretations of record, *Fitch v. Director, OWCP*, 9 BLR 1-45 (1986), rather the administrative law judge must consider the medical report as a whole in determining whether the report is reasoned and documented. *Taylor v. Director, OWCP*, 9 BLR 1-22 (1986).<sup>4</sup> On remand, the administrative law judge must consider Dr. Byers's opinion in its totality.

Next, claimant challenges the administrative law judge's determination to discount Dr. Robinette's opinion that the miner had pneumoconiosis. The administrative law judge

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<sup>4</sup> Claimant's contention that the administrative law judge erred in not sufficiently explaining his reason for finding Dr. Byers' change in opinion reading the existence of pneumoconiosis inconsistent is rejected, however, as the administrative law judge found it unconvincing. Decision and Order on Remand at 1.

accorded little weight to Dr. Robinette's opinion because he found that Dr. Robinette did not personally interpret any of the miner's x-rays and failed to consider the negative interpretations of Drs. Wiot, Spitz, Branscomb, Scott and Wheeler. Decision and Order on Remand at 1. Claimant correctly asserts, however, that Dr. Robinette referred to Dr. Branscomb's opinion which referred to the negative x-rays in question, discussed additional specific findings on the x-rays, and discussed Dr. Branscomb's interpretation of the x-ray findings. Accordingly, the administrative law judge's finding that Dr. Robinette's opinion was not based on a complete review of the evidence is not supported by substantial evidence. Further, the administrative law judge's reliance on negative x-rays to discredit the opinion of Dr. Robinette without consideration of the opinion as a whole is error. We, therefore, vacate the administrative law judge's finding regarding Dr. Robinette's opinion and remand for the administrative law judge to reconsider Dr. Robinette's opinion on remand. *See Tanner v. Freeman United Coal Co.*, 10 BLR 1-85 (1987); *Fitch, supra*; *Taylor, supra*; *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985); *Ridings v. C & C Coal Co., Inc.*, 6 BLR 1-227 (1984).

Finally, claimant contends that the administrative law judge erred in crediting the opinions of Drs. Chandler, Employer's Exhibit 8, and Branscomb of no pneumoconiosis, Employer's Exhibit 9, because their opinions are based upon erroneous assumptions regarding restrictive versus obstructive impairments which were rejected in *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995). The administrative law judge, however, permissibly credited the opinions of Drs. Chandler and Branscomb because he found them well-reasoned and consistent with the evidence of record, *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). Moreover, contrary to claimant's argument, Drs. Chandler and Branscomb never opined that coal mine employment can never cause a chronic obstructive pulmonary disease. *See Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996). Accordingly, we reject claimant's argument that the administrative law judge erred in crediting the opinions of Drs. Chandler and Branscomb.

If the administrative law judge finds the existence of pneumoconiosis established at Section 718.202(a)(4), he must then determine whether the evidence is sufficient to establish that pneumoconiosis hastened the miner's death pursuant to Section 718.205(c). *See Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

Accordingly, the administrative law judge's Decision and Order on Remand Denying Benefits is affirmed in part, vacated in part, and the case is remanded for further consideration consistent with this decision.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge