BRB No. 00-0136 BLA

BETTY CARNER (Widow of MORRIS CARNER)	)	
Claimant-Respondent	)	
v.	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:
Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order and Decision and Order on Motion for Reconsideration of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garten & Hayes), Bluefield, West Virginia, for claimant.

Helen H. Cox (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

McGRANERY, Administrative Appeals Judge:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order and Decision and Order on Motion for Reconsideration (98-BLA-0809) of Administrative Law Judge Stuart A. Levin awarding 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 accepted

[1] Claimant, Betty Carner, is the widow of Morris Carner, who was awarded benefits on his living miner's claim on November 28, 1984. Director's Exhibit 17. The miner died

the parties' stipulations to at least eleven years of coal mine employment, that claimant was an eligible survivor, and that the miner had pneumoconiosis which arose out of coal mine employment as they were supported by the record, and found that the sole issue before him was whether the miner's death was due to pneumoconiosis. Turning to this issue, the administrative law judge found that the evidence of record was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Accordingly, benefits were awarded.

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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment, that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that death was caused by complications of pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied* 113 S.Ct. 969 (1993); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that any condition that hastens the miner's death is a substantially contributing cause of death for purposes of Section 718.205(c)(2). *See Shuff, supra*.

On appeal, the Director urges reversal of the award of benefits, contending that the administrative law judge erred in concluding that the opinion of Dr. Bear, the miner's treating physician, was documented and reasoned, and that it unequivocally established that pneumoconiosis hastened the miner's death. In response, claimant contends that the administrative law judge's Decision and Order and Decision and Order on Reconsideration are supported by substantial evidence and should, therefore, be affirmed.

---

on May 9, 1996. Director's Exhibit 3. Claimant filed this survivor's claim on May 22, 1996. Director's Exhibit 1. Because the miner's claim was filed March 12, 1982, claimant is not entitled to derivative benefits based on the finding of entitlement in the miner's claim. 20 C.F.R. §725.212.

[2] Since the miner's last coal mine employment took place in West Virginia, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

In finding that the miner's death was due to pneumoconiosis, the administrative law judge determined, in light of the fact that the miner was totally disabled due to pneumoconiosis arising out of coal mine employment during his lifetime, that "his treating physician's assessment that the [m]iner's sudden death was probably due to a combination of underlying Black Lung disease, as well as due to his severe ischemic cardiomyopathy was sufficiently definitive to satisfy the requirements of Section 718.205(c) of the regulations." Decision and Order at 4. Further, the administrative law judge accorded great weight to Dr. Bear's opinion as it was uncontradicted. The administrative law judge found it more persuasive than the "death certificate, prepared by Dr. Diane Ashby, an emergency room physician who had no opportunity to attend the Miner during his lifetime, but declared him dead on arrival at the hospital." Decision and Order at 3; *see* Hearing Transcript 20-22. On reconsideration, the administrative law judge reiterated that Dr. Bear's status as the miner's "treating physician" and "his knowledge of [the miner's] condition as demonstrated in the record," supplied a rational basis for his opinion. Decision and Order at 4.

After careful consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence. Dr. Bear stated that "I think, more than likely, [the miner's] sudden death was probably due to a combination of underlying Black Lung disease, as well as due to his severe ischemic cardiomyopathy." Director's Exhibit 4. Although Dr. Bear, the miner's treating physician does couch his opinion in terms of probability, the Fourth Circuit has stated in *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763, 21 BLR 2-587, 2-604-605 (4th Cir. 1999):

> Claimants need not prove entitlement beyond a doubt, but rather by a simple preponderance of the evidence. Assessment of the complexities of human health and disease defies death-and-taxes confidence, and we have noted that the 'state of medical knowledge concerning the exact consequences of prolonged exposure to coal dust' is uncertain. *Bethlehem Mines Corp. v. Massey*, 736 F.2d 120, 124 (4th Cir.1984).

In *Mays*, the Fourth Circuit further stated:

> Of course, uncertainty is not proof, and claimants must prove entitlement. Nevertheless, a reasoned medical opinion is not rendered a nullity because it acknowledges the limits of reasoned medical opinions. Many wise speakers choose their

[3] The death certificate listed sudden cardiac death, coronary artery disease and myocardial infarction as the causes of death. Dr. Bear certified the causes of death. Director's Exhibit 3.

> words carefully and conservatively, never overstating as certain an opinion that admits of any doubt, and some timid ones unnecessarily couch a sound message in noncommittal language.... In sum, the reliability of a given opinion is not necessarily revealed by the forcefulness of the speaker's language.

176 F.3d at 763, 21 BLR at 2-605.

In the instant case, although the administrative law judge acknowledged that an opinion may be accorded less weight because it is equivocal, *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988), equivocation does not necessarily require rejection of the opinion, where as here, "the probative force of an opinion...is reasonably apparent,"and "the doctor intends to signify a probability supported by a rational basis." Decision and Order on Reconsideration at 3; *see Mays*, *supra*.

Further, contrary to the Director's arguments, the administrative law judge found that the record demonstrated Dr. Bear's knowledge of the miner's condition and familiarity with the miner's physical examination results, history and symptoms. Decision and Order on Reconsideration at 3. We cannot, therefore, say that the administrative law judge erred in finding the opinion sufficiently documented and reasoned. *See Adamson v. Director, OWCP*, 7 BLR 1-229, 1-232 (1984); *Gomola v. Manor Mining and Contracting Corp.*, 2 BLR 1-130, 1-134-35 (1979). Accordingly, as the administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), we may not reweigh the evidence or substitute our inferences on appeal, as long as the administrative law judge's findings are supported by substantial evidence. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Consequently, we hold that the administrative law judge permissibly determined that the unrefuted opinion of Dr. Bear was sufficient to establish that pneumoconiosis contributed to the miner's death. *See Shuff*, *supra*.

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

---

[4] The administrative law judge also properly rejected the Director's argument that claimant could not carry her burden of persuasion because an autopsy was not performed on the miner's body. Tr. 18-19; Decision and Order at 4.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL, Chief
Administrative Appeals Judge

I concur:

NELSON, Acting Administrative Appeals Judge dissenting:

I respectfully dissent from the decision of my colleagues affirming the administrative law judge's crediting of the opinion of Dr. Bear to find that pneumoconiosis hastened the miner's death. Rather, I agree with the Director that on the issue of whether pneumoconiosis hastened the miner's death, the opinion of Dr. Bear is unexplained, unreasoned and uncertain, and thus is not credible evidence upon which to base an award of benefits.

Whether a medical report is sufficiently reasoned is a determination to be made by the administrative law judge. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*). Yet a "mere statement of a conclusion by a physician, without any explanation of the basis for that statement, does not take the place of the required reasoning." *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). The Fourth Circuit recently followed this principle in *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, BLR (4th Cir. 2000). In *Sparks*, Dr. Stefanini listed "coal workers' pneumoconiosis, simple" in the blank for other significant conditions contributing to death on the death certificate. In addition, the record contained a notation on the autopsy report indicating that pneumoconiosis was present at the time of death. In concluding that Dr. Stefanini had not provided an explanation of how, or if, pneumoconiosis hastened the miner's death, the court held that, "[t]he death certificate indicates that Dr. Stefanini believed that pneumoconiosis contributed to Mr. Spark's death, but Dr. Stefanini's failure to offer some reasoning for this view renders his bald conclusion insufficient to support the administrative law judge's finding." 213 F.3d at 192; *see also Freeman United Coal Mining Co. v. Stone*, 957 F.2d 360, 16 BLR 2-57 (7th Cir. 1992); *Risher v. OWCP*, 940 F.2d 327, 15 BLR 2-186 (8th Cir. 1991). In the instant case, the report of Dr. Bear likewise lacks any explanation for its bald conclusion that the miner's death was due to pneumoconiosis.

The only statement by Dr. Bear identifying pneumoconiosis as a factor in the miner's death is contained in a letter dated May 30, 1996. In its entirety, this letter reads:

> Morris had been a patient of mine prior to his death. His death was considered to be due to sudden cardiac death, mostly likely due to sudden, unexpected ventricular arrhythmia. He had severe underlying coronary artery disease. He had a previous MI and had undergone coronary artery bypass surgery in 1988. Since then, he had been troubled with recurrent congestive heart failure and symptoms of dyspnea with exertion. I think, more than likely, his sudden death was probably due to a combination of underlying Black lung disease, as well as due to his severe ischemic cardiomyopathy. He had an ejection fraction that was estimated to be about 25%.

Director's Exhibit 4.

As with the opinion of Dr. Stefanini, which was rejected by the Fourth Circuit in *Sparks*, Dr. Bear's letter, in the instant case, simply indicates that he believes that pneumoconiosis contributed to the miner's death. This letter does not offer any reasoning or explanation in support of this opinion.

In the Decision and Order on Motion for Reconsideration, it is suggested that the reasoning in support of Dr. Bear's opinion need not "appear within the four corners of the report in which the opinion is rendered." Decision and Order on Motion for Reconsideration at 3. While this is true, in order to be a reasoned opinion, the basis for a conclusion must be discernible from the record. In addition to his May 30, 1996, letter, the record also contains treatment notes by Dr. Bear, as well as a death certificate certifying the causes of death by Dr. Bear. However, while he was the miner's treating physician, Dr. Bear's treatment notes do not diagnose or mention pneumoconiosis, *see* Director's Exhibit 6. Likewise, the death certificate does not address the existence of pneumoconiosis, nor does it identify pneumoconiosis as a factor in the miner's death, *see* Director's Exhibit 3, and there is no reference to any other evidence of record which offers a basis for concluding that pneumoconiosis hastened the miner's death. Thus, there are no medical submissions from which one can discern a basis for Dr. Bear's conclusion that the miner's death was due to pneumoconiosis. *See generally Sparks, supra*; *Lango, supra*; *Stone, supra*; *Risher, supra*; *Clark, supra*.

In addition, I would hold that Dr. Bear's report is insufficient to establish death due to pneumoconiosis inasmuch as this report is too equivocal to constitute substantial evidence in support of claimant's burden. The administrative law judge addresses the potential equivocal nature of Dr. Bear's report and concludes that the probative force of this report should not be defeated by semantics. The Fourth Circuit reached a similar conclusion in *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999). In *Mays*, the court concluded that the mere use of the passive voice and the use of the word "could" did not

render an opinion equivocal. Rather, in the full context of the doctor's report and of the gross observations that the doctor had made (in which the doctor was impressed by the severity of the miner's pneumoconiosis and by the miner's respiratory failure), the court held that the reasonableness of the doctor's statement was clearer.

Thus, in *Mays*, the use of the word "could" was deemed not to be equivocal when reviewed in the context of the doctor's entire report. In the instant case, however, as stated already, neither his May 30, 1996 letter, nor any of Dr. Bear's other medical submissions contain any rationale or basis for concluding that the miner's pneumoconiosis caused the miner's death. In fact, the May 30 letter is Dr. Bear's only mention of the existence of pneumoconiosis. Therefore, while the mere use of a particular word does not establish that a report is equivocal, a review of the full context of Dr. Bear's submissions does not bolster his attempt to relate the miner's death to pneumoconiosis. In the end, all that we have from Dr. Bear is the statement that "[he], think[s] more than likely, [the miner's] sudden death was probably due to a combination of pneumoconiosis as well as severe ischemic cardiomyopathy." Director's Exhibit 4. This solitary statement, phrased in such equivocal terms, is insufficient to meet claimant's affirmative burden. *See Mays*, *supra*; *see also United States Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, F.3d , 21 BLR 2-639 (4th Cir. 1999).

Dr. Bear's opinion is unexplained and equivocal, and consequently I would reverse the administrative law judge's determination that this opinion constitutes substantial evidence in support of claimant's burden to establish that the miner's death was due to pneumoconiosis. Accordingly, I would deny benefits in this claim.

MALCOLM D. NELSON, Acting
Administrative Appeals Judge