BRB No. 03-0240 BLA

PEARL M. WILES (Widow of ESTIL WILES) Claimant-Respondent v. EASTERN ASSOCIATED COAL CORPORATION Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 12/09/2003 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Tab R. Turano and Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for employer.

Jennifer U. Toth (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (02-BLA-0019) of Administrative Law Judge Linda S. Chapman (the administrative law judge) on a survivor's claim[1] 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).[2] The administrative law judge credited the miner with thirty-three years of coal mine employment. Considering the claim on its merits under 20 C.F.R. Part 718, the administrative law judge found that claimant established the existence of pneumoconiosis as defined by the Act at 20 C.F.R §718.202(a)(4), and at 20 C.F.R. §718.202(a) pursuant to *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). The administrative law judge also found that claimant established that the miner's death was due, at least in part, to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in finding the existence of legal pneumoconiosis established at 20 C.F.R. §718.202(a)(4) and in finding that claimant established death due to pneumoconiosis at 20 C.F.R. §718.205(c). Employer further contends that this case "represents the type of results-oriented decision-making that the circuit courts have consistently and repeatedly rejected for good reason." Employer's Brief at 9. Employer urges the Board to vacate the decision below. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), responds, and contends that the doctrine of collateral estoppel bars employer from relitigating the issue of whether the miner suffered from pneumoconiosis that arose from his coal mine employment. The Director notes that the miner was awarded benefits under the Act and was

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[1]Claimant, the miner's widow, filed the instant survivor's claim on October 18, 2000. Director's Exhibit 1. The miner's death certificate indicates that the miner died on July 31, 2000 due to dementia due to chronic obstructive pulmonary disease. Director's Exhibit 8.

[2]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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

receiving benefits at the time of his death.[3] In the event that the Board affirms the administrative law judge's award of benefits, the Director further contends that the date from which benefits commence must be corrected to July 2000, the month of the miner's death, in accordance with 20 C.F.R. §725.503(c). Employer has filed a reply brief.

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, such as in the instant case, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c); *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). Under 20 C.F.R. §718.205(c)(2), death will be considered to be due to pneumoconiosis if pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. Pursuant to the revised regulation at 20 C.F.R. §718.205(c)(5), pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5).

We initially address the Director's contention that the doctrine of collateral estoppel bars employer from relitigating the issue of the existence of pneumoconiosis at 20 C.F.R. §718.202(a). The Director argues that the district director's August 6, 2001 Notice of Initial Determination raised the collateral estoppel issue "by giving preclusive effect to ALJ Gray's 1987 determination that Mr. Wiles suffered from pneumoconiosis." Director's Brief at 7; Director's Exhibit 23. The Director further argues that even assuming *Compton* changed the law significantly regarding claimant's burden to establish the existence of pneumoconiosis at 20 C.F.R. §718.202, "*Compton* does not trump the application of collateral estoppel in this case" because Judge Gray's finding of the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4) is consistent with *Compton*. Employer's Reply Brief at 9.

[3] Administrative Law Judge John Allen Gray awarded benefits in the miner's duplicate claim by Decision and Order dated December 7, 1987. Director's Exhibit 27. The Board affirmed Judge Gray's award of benefits, rejecting employer's contentions that Judge Gray was without jurisdiction to consider the duplicate claim and that Judge Gray erred in finding that the miner established total disability due to pneumoconiosis at 20 C.F.R. §718.204(b) (2000). *Wiles v. Eastern Associated Coal Co.*, BRB No. 87-3812 BLA (Feb. 26, 1990)(unpublished).

Employer contends that the Director waived the argument that employer is barred from relitigating the issue of the existence of pneumoconiosis, by failing to raise it before the administrative law judge. Employer characterizes as "absurd" the Director's assertion that the district director's August 6, 2001 Notice of Initial Determination "raised the collateral estoppel issue," Director's Brief at 7, where the district director found pneumoconiosis established based on the fact that the miner was receiving benefits at the time of his death and on the fact that the evidence submitted in connection with the instant survivor's claim established the existence of pneumoconiosis. Employer's Reply Brief at 4. Employer also contends that, even if timely raised, the doctrine of collateral estoppel cannot be applied because to do so in this case, where the administrative law judge found the existence of pneumoconiosis established based on her analysis of the record evidence, would not conserve judicial resources or protect the parties from relitigating issues that another party has already litigated and lost. Employer further contends that the doctrine of collateral estoppel does not apply in this case because (1) the administrative law judge found that the x-ray evidence submitted in connection with the instant claim does not establish the existence of pneumoconiosis, which is contrary to Judge Gray's decision awarding benefits in the miner's claim, and (2) because *Compton*, as well as the decisions of the United States Court of Appeals for the Fourth Circuit in *U.S. Steel Mining Co., Inc. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999) and *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997), constitutes a change in law and precludes application of the doctrine of collateral estoppel.

Contrary to the Director's argument, there is no evidence that the Director raised any collateral estoppel issue while the claim was pending before the administrative law judge. The district director's August 6, 2001 Notice of Initial Determination, upon which the Director relies as evidence that he raised the argument below, is dated before the September 28, 2001 transfer of the instant case to the Office of Administrative Law Judges for a hearing. Director's Exhibits 23, 30. Further, a review of the August 6, 2001 Notice of Initial Determination does not support the Director's assertion that the Notice "raised the collateral estoppel issue by giving preclusive effect to ALJ Gray's 1987 determination that Mr. Wiles suffered from pneumoconiosis." Director's Brief at 7. Rather, while the Notice includes the comment that, "It is again noted that the miner was already receiving benefits based on total disability due to pneumoconiosis," Director's Exhibit 23, the Notice reflects that the district director's finding of pneumoconiosis was based on his substantive consideration of the record evidence. *Id.* The Director, having failed to raise any collateral estoppel argument while the case was pending before the administrative law judge, cannot raise it now. *Armco, Inc. v. Martin*, 277 F.3d 468, 22 BLR 2-334 (4th Cir. 2002).

We next address employer's challenge to the administrative law judge's weighing of the medical opinion evidence in finding the existence of pneumoconiosis established at 20 C.F.R. §718.202(a)(4). Employer asserts that the miner died due to dementia and that the

miner's chronic obstructive pulmonary disease contributed to death. Employer thus argues that the issue in this case is *whether the miner's chronic obstructive pulmonary disease was due to his coal mine employment or history of cigarette smoking.* The administrative law judge initially noted that Judge Gray found the existence of pneumoconiosis established in the miner's claim based on the x-ray and medical opinion evidence. Decision and Order at 5. Based on the evidence of record considered as a whole pursuant to *Compton*, the administrative law judge found that the medical opinion evidence, including Dr. Robinette's opinion, established the existence of legal pneumoconiosis notwithstanding the negative weight of the x-ray evidence. Employer argues that the administrative law judge selectively analyzed the medical evidence and substituted her opinion for those of the medical experts in crediting Dr. Robinette's medical opinion at 20 C.F.R. §718.202(a)(4). Employer further asserts that Dr. Robinette's opinion is neither reasoned nor documented and thus, the administrative law judge erred in according the opinion greater weight based on Dr. Robinette's status as a treating physician.

Employer's contentions lack merit. The administrative law judge permissibly found Dr. Robinette's opinion to be more persuasive than Dr. Branscomb's contrary opinion on the issue of the existence of pneumoconiosis. *Doss v. Director, OWCP*, 53 F.3d 654,19 BLR 2-181 (4th Cir. 1995). The administrative law judge specifically indicated that Dr. Robinette treated the miner for his "severe" pulmonary problems for about ten years and diagnosed coal workers' pneumoconiosis by x-ray and severe obstructive lung disease associated with exposure to coal dust as confirmed by pulmonary function studies. Decision and Order at 15. The administrative law judge stated:

> While [Dr. Robinette's] conclusion that Mr. Wiles had pneumoconiosis based on his x-rays is at odds with my determination that, based on a review of the entire record, the x-ray interpretations are not sufficient to justify a finding of pneumoconiosis, I find his additional diagnosis of obstructive impairment associated with Mr. Wiles' exposure to coal mine dust to be reliable and adequately supported by the evidence of record. Dr. Robinette based this diagnosis on his clinical examinations of Mr. Wiles over a lengthy period, as well as the results of objective testing, and provided a more persuasive rationale for his conclusions [than Dr. Branscomb.]

Decision and Order at 15. The administrative law judge thereby properly found Dr. Robinette's opinion to be reasoned and documented, *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987), and properly gave it greatest weight, *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998). Inasmuch as substantial evidence supports the administrative law judge's crediting of Dr. Robinette's opinion to find the existence of pneumoconiosis established at 20 C.F.R. §718.202(a)(4), we affirm it.[4]

Employer next contends that the administrative law judge did not provide a valid reason for discrediting Dr. Branscomb's opinion that the miner's chronic obstructive pulmonary disease was due to his history of cigarette smoking and was unrelated to coal mine employment. The administrative law judge indicated that she was "not convinced" by Dr. Branscomb's opinion that the miner's chronic obstructive pulmonary disease was principally due to his smoking history, and to the miner's repeated infections and pneumonias. Decision and Order at 14. The administrative law judge found that although Dr. Branscomb indicated that the miner's "pattern of disease was typical of progressive tobacco induced wet [chronic obstructive pulmonary disease], and that no publications that cite coal mine dust exposure as a cause of [chronic obstructive pulmonary disease] have shown any examples of such a pattern, he did not cite to any publications discussing tobacco use as the sole, or even typical, cause of "wet" obstructive disease." *Id*. at 15. The administrative law judged further found that Dr. Branscomb, "having seized on Mr. Wiles' history of tobacco smoking as a global explanation for his severe pulmonary disease, [ ] did not discuss the possibility that Mr. Wiles' equally significant exposure to coal mine dust also caused, or at least contributed to, that process, or provide rationale for totally excluding it as a factor." *Id.* Employer argues that the administrative law judge irrationally discredited Dr. Branscomb's opinion on the basis that he did not cite any medical publication in support of his opinion that the miner's chronic obstructive pulmonary disease showed a pattern typical of progressive tobacco induced wet chronic obstructive pulmonary disease. Employer argues that there is no requirement that a physician support his opinion with scientific studies. Employer asserts that Dr. Branscomb "clearly explained, in no uncertain terms, that Wiles' respiratory obstruction was wholly unrelated to coal dust exposure," Employer's Brief at 18, and thus argues that the evidence refutes the administrative law judge's finding that Dr.

[4] Throughout its brief, employer argues that the administrative law judge's Decision and Order is result-oriented. Employer's Brief at 9, 15, 15 n.2, 17, 19, 19 n.4. We reject employer's assertions. A review of the decision below shows that the administrative law judge properly resolved the conflicting medical opinion evidence based on her determinations regarding credibility and weight. *Underwood v. Elkay Mining, Inc*., 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Doss v. Director, OWCP*, 53 F.3d 654, 19 BLR 2-181 (4th Cir. 1995).

Branscomb did not discuss the possibility that the miner's coal dust exposure caused, or at least contributed to, his chronic obstructive pulmonary disease.

We reject employer's contention that the administrative law judge did not provide a valid reason for according less weight to Dr. Branscomb's medical opinion. Substantial evidence in the record supports the administrative law judge's finding that Dr. Branscomb did not cite any medical publication discussing tobacco use as the sole, or even typical, cause of "wet" chronic obstructive pulmonary disease. Employer's Exhibits 1, 4. Specifically, Dr. Branscomb, in his consulting opinion dated June 18, 2002, opined:

> None of the publications citing coal mine dust exposure as a cause of COPD or airways obstruction have presented any examples of the pattern of disease and characteristics of the findings as seen in Mr. Wiles. In contrast they are absolutely typical of progressive tobacco induced wet COPD as occurs so often in cigarette smokers.

Employer's Exhibit 1. During Dr. Branscomb's September 11, 2002 deposition, the following exchange took place:

> Q. Could you explain what your reasons are for concluding that the Chronic Obstructive Pulmonary Disease of Mr. Wiles is not related to his coal mine dust exposure?
>
> A. All right. First, there is nothing in the medical literature that would suggest Chronic Obstructive Pulmonary Disease of the type that he has, with these infectious exacerbations, expiratory airways obstructions, shortness of breath, coughing and spitting, there's nothing that would suggest that that is the product of early medical Pneumoconiosis. In other words, if I assume that his x-rays are, let's say, if I assume they are PQ 2/3 on both sides, that would be an example of simple Pneumoconiosis. Simple Pneumoconiosis does not produce profound chronic bronchitic manifestation.
>
> So, I can rule out simple Pneumoconiosis as a cause of his Bronchitis. But second, how about coal mine dust itself apart from medical Pneumoconiosis. In other words, how about legal Pneumoconiosis, how about the coal dust causing the Bronchitis. I think that's the meat of your question.
>
> Q. Yes, sir.

> A. And I would say that his Chronic Obstructive Disease is not caused by coal mine dust first because it doesn't make good sense to think that a severe intermittent bacteria-oriented infectious process would be caused by a remote history of having breathed dust. That doesn't make good pathologic medical sense. But more to the point is that fact that those doctors who have studied this relationship and have come out with many publications relating coal mine dust to obstructive disease, not any of those papers describe what this man has; they describe things that are totally different.
>
> So this is simply inconsistent with the manifestations of airways obstruction as have been found associated with coal mine dust exposure. By the way, I concur that coal mine dust exposure can cause chronic bronchitic symptoms and can cause airways obstruction. But when it does, they have their characteristics that are identifiable and recognizable and set by the public literature, and this is just not one of them.
>
> Whereas, in contrast, it fits absolutely, exactly with the known natural history of COPD of tobacco origin.

Employer's Exhibit 4 at 20-22. The administrative law judge's decision to accord less weight to Dr. Branscomb's opinion because that the physician failed to identify the medical literature upon which he relied, was consistent with her duty to consider the quality of opinions expressed by medical experts. *Adkins v. Director, OWCP*, 958 F.3d 49, 16 BLR 2-61 (4th Cir. 1992); *Sinclair v. United Food and Commercial Workers*, 23 BRBS 148, 154 (1989). The administrative law judge thereby provided a valid reason as to why she was not "convinced by Dr. Branscomb's conclusions," Decision and Order at 14, and thus, we affirm her decision to accord less weight to Dr. Branscomb's opinion at 20 C.F.R. §718.202(a)(4).

Employer correctly notes that, contrary to the administrative law judge's characterization of Dr. Branscomb's opinion, the physician did discuss whether the miner's exposure to coal mine dust contributed to his chronic obstructive pulmonary disease and impairment. Dr. Branscomb opined that the miner did not have coal workers' pneumoconiosis; that the miner's totally disabling chronic obstructive pulmonary disease was due to cigarette smoking, repeated infections and pneumonias and was not related to exposure to coal mine dust; and that the miner's chronic obstructive pulmonary disease was a cause of death. Employer's Exhibits 1, 4. Dr. Branscomb specifically stated:

> Mr. Wiles did not have coal workers' pneumoconiosis. Although he had a sufficient exposure the characteristics of his x-ray changes, which I have discussed at length, do not fit with coal workers' pneumoconiosis. They are quite consistent with old tuberculosis. The x-rays have been interpreted by some as consistent with CWP. I differ with that opinion.
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> He was totally disabled as the result of a pulmonary disorder. This was severe COPD of the chronic bronchitic "blue bloater" variety. This is the disorder for which smoking is the principal cause. It is now the fourth leading cause of death in men in the United States and the only major cause of death which is on the increase. Mr. Wiles' illness followed a typical course of increasing severity with numerous infectious (sic) and other complications long after he left coal mining.
>
> If I assume the x-ray changes are CWP, as some have thought, I would still conclude that these completely stable well circumscribed lesions had no effect whatsoever on the symptoms and progress of his chronic pulmonary disease and did not contribute to his death.
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> His death was caused by the combination of COPD, Altzheimers (sic) disease, acute infection, coronary disease and probably aspiration as well.
>
> In my opinion Mr. Wiles' COPD was neither caused nor aggravated by coal mine dust. This is the case whether he does or does not have CWP. I base this on the heavy tobacco exposure and on the rate of progression and even more on the characteristics of progression with repeated infectious episodes and pneumonias. The clinical course of his COPD is not that of the obstructive process which has been found to be caused by coal mine dust. None of the publications citing coal mine dust exposure as a cause of COPD or airways obstruction have presented any examples of the pattern of disease and characteristics of the findings as seen in Mr. Wiles. In contrast they are absolutely typical of progressive tobacco wet COPD as occurs so often in cigarette smokers.

Employer's Exhibit 1. The administrative law judge's error in mischaracterizing Dr. Branscomb's findings, however, is harmless because, as set forth above, he provided an alternative rational basis for giving less weight to Dr. Branscomb's opinion. *Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988).

Based on the foregoing, we affirm the administrative law judge's finding of the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) and reject employer's challenge to the administrative law judge's weighing of the medical opinion evidence thereunder.

Employer next contends that the administrative law judge, in considering the evidence relevant to claimant's burden to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c), summarily credited Dr. Maran's opinion because it was favorable to claimant. Employer's Brief at 19. Dr. Maran, in answering a questionnaire sent to him by the Department of Labor (DOL), agreed that "black lung disease" caused, contributed significantly to or hastened death. Director's Exhibit 11. Dr. Maran explained:

> Patient had recurrent hospitalizations with pneumonia and worsening pulmonary status for which pneumoconiosis was a significant factor. I believe it played a major role in overall deterioration of his clinical condition.

Id. Dr. Maran also indicated that the miner's severe dementia was a significant contributing factor in his death. *Id.* The administrative law judge indicated that Dr. Maran began to treat the miner in 1999 when the miner entered a nursing home, and was the miner's "treating physician for the last months of his life" both in the nursing home and in the hospital. Decision and Order at 16. The administrative law judge then credited Dr. Maran's indication that "black lung disease" caused, contributed significantly or hastened the miner's death. Director's Exhibit 11. The administrative law judge referred to the fact that she previously found that the miner had obstructive pulmonary disease as a result of his exposure to coal dust, and found that the claimant established that the miner's death was due, at least in part, to pneumoconiosis. Decision and Order at 17.

Employer acknowledges that Dr. Maran treated the miner during the last year of his life, and asserts that the administrative law judge's preference for Dr. Maran's summary opinion is irrational. Employer's Brief at 19. Employer also acknowledges that while Dr. Maran indicated, in the death certificate, that death was due to dementia and chronic obstructive pulmonary disease, Dr. Maran did not link the disease to the miner's coal mine employment. Employer argues, "Only after DOL requested Dr. Maran's opinion for litigation did the doctor declare that pneumoconiosis contributed significantly to [the miner's] demise. The DOL, however, provided Dr. Maran with an incorrect work history and erroneously informed the doctor that Wiles had biopsy evidence of pneumoconiosis. *See* Dx 11 at 3." Employer's Brief at 20. Employer thus argues that Dr. Maran's opinion does not constitute reliable evidence on the issue of the cause of the miner's death. Employer further generally contends that the administrative law judge erroneously discredited Dr. Branscomb's opinion because it was contrary to the administrative law judge's finding that claimant established the existence of chronic obstructive pulmonary disease related to the

miner's coal mine employment.

While employer correctly notes that Dr. Maran did not identify, in the death certificate, an etiology for the miner's chronic obstructive pulmonary disease, Director's Exhibit 11, Dr. Maran subsequently agreed that the miner had "black lung disease." 20 C.F.R. §718.201(a)(2); Director's Exhibit 11. Dr. Maran explained, by subsequent questionnaire, that the miner had recurrent hospitalizations with pneumonia and a worsening pulmonary status for which "pneumoconiosis" was a significant factor. *Id.* He specifically expressed his belief that pneumoconiosis played a major role in the overall deterioration of the miner's condition. *Id.* Given Dr. Maran's findings, we hold that the administrative law judge could properly find Dr. Maran's opinion sufficient to carry claimant's burden to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c). 20 C.F.R. §718.205(c); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

Further, Dr. Maran completed the miner's death certificate on August 4, 2000, indicating therein that death was due to dementia and chronic obstructive pulmonary disease. Director's Exhibit 11. The fact that Dr. Maran subsequently agreed that the miner had "black lung disease," by answering a questionnaire dated March 28, 2001, which had been sent to him by the DOL to elicit an opinion in connection with the instant claim, *id*., does not render Dr. Maran's opinion unreliable. *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*). We thus hold that the administrative law judge rationally relied on Dr. Maran's opinion that the miner's "black lung disease" caused, contributed significantly or hastened the miner's death, Director's Exhibit 11, to find that claimant met her burden to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c). *Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002).[5] Based on the foregoing, we affirm the administrative law judge's finding of death due to pneumoconiosis at 20 C.F.R. §718.205(c).

We further affirm the administrative law judge's award of benefits in this case and modify the date from which benefits commence. Pursuant to 20 C.F.R. §725.503(c), claimant, as a matter of law, is entitled to benefits commencing July 1, 2000, the month of the miner's death. 20 C.F.R. §725.503(c).

[5] Inasmuch as the administrative law judge properly relied on Dr. Maran's opinion to find that claimant established death due to pneumoconiosis at 20 C.F.R.§718.205(c), we hold harmless any error in the administrative law judge's weighing of Dr. Branscomb's opinion thereunder.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed in part and modified in part.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge