U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 17-0238 BLA

CLARA FUSON (Widow of KENNETH FUSON) Claimant-Petitioner v. BILLY RAY CARROLL CONSTRUCTION and AMERICAN MINING INSURANCE COMPANY Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 02/13/2018 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

Austin P. Vowels (Vowels Law PLC), Henderson, Kentucky, for claimant.

Matthew J. Moynihan (Penn, Stuart & Eskridge), Bristol, Virginia, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2014-BLA-05658) of Administrative Law Judge Adele Higgins Odegard, rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended 30 U.S.C. §§901-944 (2012) (the Act).[1] This case involves a survivor's claim filed on June 20, 2013.

After crediting the miner with twenty-four years of coal mine employment[2] in conditions substantially similar to those in an underground mine, the administrative law judge found that the evidence did not establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge therefore found that claimant could not invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2012). The administrative law judge also found that the evidence did not establish complicated pneumoconiosis under 20 C.F.R. §718.304, and thus claimant could not invoke the irrebuttable presumption of death due to pneumoconiosis under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3).

The administrative law judge then turned to whether claimant could affirmatively establish her entitlement to survivor's benefits under 20 C.F.R. Part 718. The administrative law judge found that the evidence did not establish that the miner had either clinical or legal pneumoconiosis[4] pursuant to 20 C.F.R. §718.202(a), or that the

[1] Claimant is the widow of the miner, who died on December 21, 2009. Director's Exhibit 11.

[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, 1-202 (1989) (en banc).

[3] Section 411(c)(4) provides a rebuttable presumption that the miner's death was due to pneumoconiosis if claimant establishes that the miner worked fifteen or more years in underground coal mine employment, or in coal mine employment in conditions substantially similar to those in an underground mine, and suffered from a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[4] "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). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung to that

miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). Accordingly, the administrative law judge denied benefits.[5]

On appeal, claimant contends that the administrative law judge erred in finding that the pulmonary function study and medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv), and therefore erred in finding that claimant could not invoke the Section 411(c)(4) presumption. Claimant further argues that the administrative law judge erred in finding that the evidence did not establish clinical or legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a), or death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensations Programs, has not filed a response brief. Claimant has filed a reply brief, reiterating her arguments.[6]

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).

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deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[5] Section 422(*l*) of the Act, 30 U.S.C. §932 (*l*) (2012), provides that the survivor of a miner who was eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis. As the miner was not determined to be eligible to receive benefits at the time of his death, claimant is not eligible for benefits pursuant to 30 U.S.C. §932(*l*). Decision and Order at 3.

[6] We affirm, as unchallenged on appeal, the administrative law judge's findings that the evidence did not establish total disability at 20 C.F.R. §718.204(b)(2)(ii), (iii) or complicated pneumoconiosis at 20 C.F.R. §718.304. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11, 15-16, 31.

Invocation of the Section 411(c)(4) Presumption – Total Disability

Claimant challenges the administrative law judge's weighing of the pulmonary function study and medical opinion evidence and her finding that the evidence overall does not establish that the miner was totally disabled at 20 C.F.R. §718.204(b)(2).[7]

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered five pulmonary function studies dated November 10, 2005, December 2, 2005, March 10, 2008, May 28, 2008, and May 19, 2009. Decision and Order at 13. Before determining whether the studies were qualifying[8] for total disability, she noted a discrepancy in the measurements of the miner's height, which ranged from sixty-three to sixty-six inches. *Id*. at 13-14. She resolved the evidentiary conflict by averaging the various heights, finding that the miner's correct height was 64.6 inches.[9] *Id*. Based on the miner's height, the administrative law judge found that all of the studies were non-qualifying for total disability except for the March 10, 2008 study. *Id*. Although, the March 10, 2008 study was qualifying, she found that it was invalid.[10] *Id*. at 13-14. Consequently, the administrative law judge found that the record contained no valid, qualifying pulmonary function study. *Id*. at 15. Thus, she found that the pulmonary

[7] Citing 20 C.F.R. §718.204(d)(3), (4), claimant contends that the administrative law judge failed to properly weigh testimony from prior living miner's claims with respect to the miner's respiratory or pulmonary condition. Claimant's Brief at 24-25, 31. However, 20 C.F.R. §718.305(b)(1)(iii) specifically precludes the administrative law judge from applying 20 C.F.R. §718.204(d) in determining whether claimant has established that the miner was totally disabled at the time of his death. Furthermore, in the case of a deceased miner, sworn testimony from persons knowledgeable of the miner's physical condition must be considered sufficient to establish total disability only if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition. 20 C.F.R. §718.305(b)(3). The record in this case includes medical evidence that addresses the miner's pulmonary or respiratory condition.

[8] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

[9] Because it is unchallenged on appeal, we affirm the administrative law judge's finding that the miner's actual height was 64.6 inches. *Skrack*, 6 BLR at 1-711; Decision and Order at 13-14.

[10] The administrative law judge also found that the May 28, 2008 and May 19, 2009 pulmonary function studies were invalid. Decision and Order at 14.

function study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).[11] *Id*. at 15.

Claimant contends that the administrative law judge erred in determining that the March 10, 2008 study was invalid. Claimant's Brief at 26. Claimant argues that because the study was administered for medical treatment purposes, it is not subject to the quality standards, and, therefore, the administrative law judge should have found that it supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). *Id*. Claimant's argument lacks merit.

A pulmonary function study that is not generated in connection with a claim for benefits is not subject to the specific quality standards set forth in Appendix B of 20 C.F.R. Part 718. *See* 20 C.F.R. §718.101(b); *J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-92 (2008) (holding that quality standards are not applicable to hospitalization and treatment records). An administrative law judge must still determine, however, if the results are sufficiently reliable to support a finding of total disability, despite the inapplicability of the specific quality standards.[12] *Stowers*, 24 BLR at 1-92; 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000).

Contrary to claimant's argument, the administrative law judge did not invalidate the March 10, 2008 study because it did not meet the quality standards set forth in Appendix B. Rather, the administrative law judge noted that Dr. Castle opined that the study "was invalid for accurate interpretation" because it "had only one flow-volume

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[11] The administrative law judge noted that "irrespective of whether [any study] was valid, the only [study] that was qualifying for disability was the [study] of [March 10, 2008], and there were two later [studies] that are not qualifying for disability." Decision and Order at 14.

[12] The Department of Labor explained in the comments to the 2001 revised regulations that evidence that is not subject to the quality standards must still be assessed for reliability by the fact finder:

> The Department note[s] that [20 C.F.R.] §718.101 limits the applicability of the quality standards to evidence "developed . . . in connection with a claim for benefits" governed by 20 C.F.R. [P]arts 718, 725, or 727. Despite the inapplicability of the quality standards to certain categories of evidence, the adjudicator still must be persuaded that the evidence is reliable in order for it to form the basis for a finding of fact on an entitlement issue.

65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000).

loop and one volume-time curve, instead of the requisite three." Decision and Order at 14; Employer's Exhibit 10. Moreover, Dr. Castle opined that it was "not possible to determine reproducibility based upon this data" as the study data sheet noted "poor test reproducibility." *Id.* The administrative law judge also noted that the record contained an article from NIOSH, "titled 'Spirometry Quality Assurance: Common Errors and Their Impact on Test Results.'" Decision and Order at 14-15; Claimant's Exhibit 9. She recognized that this article set forth the American Thoracic Society standard that pulmonary function studies "should not be interpreted if fewer than two acceptable curves were recorded," and that the article further explained "how flow-volume and time-volume curves reflect good (and suboptimal) performance." *Id.*

In finding that the March 10, 2008 study could not support a finding of total disability,[13] the administrative law judge permissibly found that Dr. Castle's opinion was credible, and further corroborated by the NIOSH article.[14] *See Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Stowers*, 24 BLR at 1-92; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 14. Because it is supported by substantial evidence, we affirm the administrative

[13] We reject claimant's argument that the administrative law judge should have credited a technician's notation of good patient understanding and cooperation over Dr. Castle's medical opinion to find that the March 10, 2008 study was reliable. Claimant's Brief at 26-27. A technician's notations of good effort and cooperation do not amount to substantial evidence that a study is valid in the face of competent medical opinions showing the contrary. *See Peabody Coal Co. v. Director, OWCP* [*Brinkley*], 972 F.2d 880, 885, 16 BLR 2-129, 2-135 (7th Cir. 1992) (holding that an administrative law judge erred in assuming a technician was equally qualified as a reviewing doctor to assess the validity of pulmonary function studies without evidence in the record to support that assumption); Claimant's Brief at 26.

[14] The administrative law judge also noted that the NIOSH "definition of what constitutes 'repeatability' differs from the regulation[s], in that NIOSH states that the first and second [highest] values for the FEV1 and FVC maneuvers are to be within 0.15 liters." Decision and Order at 15 n. 24. The administrative law judge stated that "pulmonary function testing is effort-dependent and spurious low values can result, but spurious high values are not possible." *Id.* at n. 25.

law judge's finding that the pulmonary function study evidence was insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(i).[15]

Claimant next argues that the administrative law judge erred in weighing the medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the opinions of Drs. Baker and Chavda that the miner was totally disabled, and the contrary opinions of Drs. Rosenberg and Fino that the miner was not totally disabled.[16] Decision and Order at 23-24; Director's Exhibits 12, 15; Claimant's Exhibits 1, 8; Employer's Exhibit 11.

The administrative law judge rejected Dr. Baker's opinion because it was based on a 2005 examination of the miner. Decision and Order at 23. She found that Dr. Baker did not adequately address whether the miner was totally disabled at the time of his death in 2009. *Id*. Although Dr. Chavda addressed whether the miner was totally disabled in 2009, the administrative law judge assigned diminished weight to his opinion because she found that Dr. Chavda relied on objective testing that was not qualifying under the regulations and on testing that was developed when the miner was hospitalized. *Id*. Moreover, the administrative law judge found that Dr. Chavda's opinion was unpersuasive because he did not address the "impact of the [m]iner's cardiac condition on the [m]iner's respiratory state at the time of the [m]iner's death." *Id*. at 24. The administrative law judge assigned no weight to Dr. Rosenberg's opinion because she found that Dr. Rosenberg did not adequately address whether the miner was disabled. *Id*. at 23. The administrative law judge assigned greater weight to Dr. Fino's opinion

[15] Claimant contends that the December 2, 2005 pulmonary function study was qualifying. Claimant's Brief at 27. We disagree. Based on the miner's height, the administrative law judge correctly found that the December 2, 2005 study was non-qualifying because the corresponding FEV1 value was not qualifying under the regulations. 20 C.F.R. Part 718, Appendix B; 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 14; Director's Exhibit 14.

[16] Although Drs. Baker and Chavda opined that the miner was totally disabled, the administrative law judge noted that the "record does not contain any medical evidence relating to the [m]iner's respiratory condition at the time of his death, and none of the physicians who rendered opinions specifically addressed the [m]iner's condition at his death." Decision and Order at 24.

because she found that it was supported by the objective medical studies of record and the miner's treatment records.[17] *Id*. at 23-24.

Claimant contends that the administrative law judge erred in assigning diminished weight to Dr. Chavda's opinion.[18] We disagree. Dr. Chavda opined that the miner was totally disabled from his usual coal mine employment by a severe pulmonary impairment, evidenced by a combination of hypoxia on arterial blood gas testing and chronic obstructive pulmonary disease (COPD) on pulmonary function testing. Claimant's Exhibits 1, 8. In diagnosing hypoxia, Dr. Chavda relied on arterial blood gas studies taken on May 31, 2000, June 9, 2000, November 10, 2005, and October 12, 2008. *Id*. The administrative law judge noted, however, that the May 31, 2000, June 9, 2000, and October 12, 2008 studies were conducted when the miner was "acutely ill." Decision and Order at 15, 23-24. Specifically, the May 31, 2000 study was taken when the miner was hospitalized for pneumonia, the June 9, 2000 study when he was hospitalized for pneumonia and sepsis, and the October 12, 2008 study when he was hospitalized for COPD and congestive heart failure exacerbations. *Id*. at 21-23; Director's Exhibit 13 at 37-40, 63-65, 208-212.

Because the quality standards applicable to blood gas studies mandate that they "not be performed during or soon after an acute respiratory or cardiac illness," 20 C.F.R. Part 718, Appendix C, the administrative law judge found that these "test results taken during hospitalization may not accurately reflect [the miner's] general respiratory condition." Decision and Order at 15. Therefore, the administrative law judge

[17] Claimant contends that the administrative law judge erred in failing to consider Dr. Broudy's opinion, which claimant asserts supports a finding of total disability. Claimant's Brief at 27, 32. Contrary to claimant's argument, Dr. Broudy's report was neither submitted, nor designated as evidence, by either party in this case. *See* 20 C.F.R. §725.414. The evidence cited by claimant is Dr. Broudy's December 2, 2005 pulmonary function study, which the administrative law judge found was non-qualifying. Decision and Order at 13; Director's Exhibit 14. This study does not include a medical opinion addressing whether the miner was totally disabled by a respiratory or pulmonary impairment. *Id*.

[18] Claimant generally contends that Dr. Baker's opinion supports a finding of total disability. Claimant's Brief at 32. However, because claimant does not identify any specific error on the part of the administrative law judge, we affirm her finding that Dr. Baker's opinion is not credible. *See Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Decision and Order at 23.

permissibly assigned diminished weight to Dr. Chavda's opinion[19] based on his reliance on these blood gas studies.[20] *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 23. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence[21] did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv).

Because the evidence does not establish that the miner had a totally disabling respiratory or pulmonary impairment, we affirm the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv).[22] Based on our affirmance of this finding, we further affirm the administrative law

[19] Because the administrative law judge provided a valid reason for discrediting Dr. Chavda's opinion, we need not address claimant's remaining arguments regarding the weight the administrative law judge accorded to this opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-3 n.4 (1983).

[20] As Dr. Fino did not diagnose a totally disabling respiratory or pulmonary impairment, his opinion is not supportive of claimant's burden to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Therefore, we need not address claimant's argument that the administrative law judge erred in crediting Dr. Fino's opinion. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[21] Claimant contends that the administrative law judge erred in failing to consider the exertional requirements of the miner's usual coal mine employment and in failing to compare them with any doctor's notations regarding the miner's physical limitations. Claimant's Brief at 25; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000). We note, however, that the administrative law judge found that the diagnoses of a respiratory or pulmonary impairment by Drs. Baker and Chavda were not credible. Decision and Order at 23-24. Moreover, Drs. Rosenberg and Fino both opined that the miner had no respiratory impairment evidenced by pulmonary function testing. Director's Exhibit 15; Employer's Exhibit 11. Therefore, the administrative law judge's failure to render a finding as to the exertional requirements of the miner's usual coal mine employment was harmless. *See Larioni*, 6 BLR at 1-1278.

[22] Claimant argues that the administrative law judge failed to consider the treatment records and weigh them with the rest of the evidence of record. Claimant's Brief at 29, 31. Contrary to claimant's argument, the administrative law judge summarized the relevant records and found that, while they indicate that the miner suffered from respiratory symptoms and heart disease, they do not establish the presence of a totally disabling respiratory or pulmonary impairment. Decision and Order at 21-23.

judge's determination that claimant could not invoke the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis.[23] *See* 20 C.F.R. §718.305(b), (c)(2).

Death Due to Pneumoconiosis – 20 C.F.R. §718.205

In a survivor's claim, where no statutory presumption applies, claimant must establish 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. §§718.1, 718.202, 718.203, 718.205; *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993). Failure to establish any one of the requisite elements precludes an award of benefits. *See Trumbo*, 17 BLR at 1-87-88.

A miner's death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was the cause of the miner's death, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(b)(1), (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(b)(6). The United States Court of Appeals for the Sixth Circuit has explained that pneumoconiosis may be found to have hastened the miner's death only if it does so "through a specifically defined process that reduces the miner's life by an estimable time." *Eastover Mining Co. v. Williams*, 338 F.3d 501, 518, 22 BLR 2-625, 2-655 (6th Cir. 2003). A physician who opines that pneumoconiosis hastened death through a "specifically defined process" must explain how and why it did so. *Conley v. Nat'l Mines Corp.*, 595 F.3d 297, 303-04, 24 BLR 2-257, 2-266 (6th Cir. 2010).

Pursuant to 20 C.F.R. §718.202(a)(1)-(4), the administrative law judge found that claimant failed to establish clinical pneumoconiosis through x-ray, biopsy, CT scan, and medical opinion evidence. Decision and Order at 26-33. Moreover, the administrative law judge found that claimant did not establish legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), as she rejected the opinions of Drs. Baker and Chavda that the miner's COPD arose out of coal mine employment. *Id*. at 36-37. Pursuant to 20 C.F.R. §718.205(b), the administrative law judge found that, even if claimant had established

[23] Claimant asserts that the administrative law judge should have found that the miner was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Claimant's Brief at 33-35. As this is a survivor's claim, the etiology of any disabling respiratory or pulmonary impairment is not germane to whether claimant is entitled to benefits. 20 C.F.R. §§718.205(b), 718.305.

that the miner had pneumoconiosis, claimant was unable to establish that the miner's death was due to pneumoconiosis, because Dr. Chavda's opinion was not credible on this issue. *Id*. at 39-40.

Claimant alleges that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). Claimant's Brief at 35-40. Claimant specifically argues that the administrative law judge erred in weighing Dr. Chavda's opinion with respect to whether legal pneumoconiosis caused, contributed to, or hastened the miner's death.[24] *Id*. Claimant's argument has no merit.

In addressing the cause of the miner's death pursuant to 20 C.F.R. §718.205(b), the administrative law judge noted that the miner "died at home, so there are no hospitalization records relating to the last few days of the [miner's] life." Decision and Order at 40. Furthermore, the only physician to opine that the miner's death was due to pneumoconiosis was Dr. Chavda, who opined that legal pneumoconiosis, in the form of COPD, caused or hastened the miner's death. *Id*.

Specifically, Dr. Chavda emphasized that the miner had "several" hospital admissions for "COPD [exacerbations]" from May 2000 to September 2009. Claimant's Exhibit 8 at 1, 5. He opined that, due to the COPD, the miner developed pneumonia, hypoxia, and respiratory distress during these hospital admissions. *Id*. at 5. He explained that the miner's hospital admissions, along with the miner's history of requiring home oxygen, evidenced the severity of the COPD. *Id*. at 6. He acknowledged that the miner had a history of "chronic systolic heart failure," but noted that a May 19, 2009 x-ray was negative for pulmonary edema, indicating that the miner was not hospitalized at that time because of congestive heart failure. *Id*. at 3, 5. Based on this information, Dr. Chavda opined that "occupational lung disease pneumoconiosis caused or [had a] hastening effect on" the miner's death. *Id*. at 5.

The administrative law judge acknowledged that the miner's hospitalization records were consistent "with COPD exacerbations in 2009, the year of [his] death."

[24] The administrative law judge also considered the miner's death certificate, in which the county coroner opined that the miner's death was due to chronic obstructive pulmonary disease. Director's Exhibit 11. Contrary to claimant's argument, the administrative law judge permissibly determined that the miner's death certificate was not sufficiently reasoned. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 518, 22 BLR 2-625, 2-655 (6th Cir. 2003); *Rowe v. Director, OWCP*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Decision and Order at 40.

Decision and Order at 40. However, the administrative law judge also found that the miner's treatment records establish that he had heart problems for the last ten years of his life, and that the two most recent x-rays in August and September of 2009 were positive for congestive heart failure. Decision and Order at 24, 40. Contrary to claimant's argument, the administrative law permissibly assigned diminished weight to Dr. Chavda's opinion that the miner's death was due to legal pneumoconiosis pursuant to 20 C.F.R. §718.205(b), because she found that Dr. Chavda's conclusion was "based on [a] selected portion of the record, and not the record as a whole." Decision and Order at 40; *see Napier*, 301 F.3d at 713-714, 22 BLR at 2-553; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. Moreover, the administrative law judge permissibly found Dr. Chavda's opinion unpersuasive because he "did not address the impact that [the miner's] congestive heart failure/cardiac disease had in the hospitalizations of 2009." *Id*.

As the administrative law judge has the authority to determine the credibility of the evidence, the administrative law judge permissibly found that Dr. Chavda's opinion, that pneumoconiosis caused or hastened the miner's death, was not credible. *See Napier*, 301 F.3d at 713-714, 22 BLR at 2-553; *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-325 (6th Cir. 2002). Dr. Chavda was required adequately explain how pneumoconiosis hastened the miner's death through a specifically defined process that reduced the miner's life by an estimable time. *See Williams*, 338 F.3d at 518, 22 BLR at 2-655; *Conley*, 595 F.3d at 303-04, 24 BLR at 2-266. The administrative law judge reasonably found that Dr. Chavda's opinion was not sufficiently credible to establish that fact. *Napier*, 301 F.3d at 713-714, 22 BLR at 2-553; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 40.

We thus affirm the administrative law judge's findings that claimant did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b),[25] and that claimant is not entitled to benefits, as those findings are supported by substantial evidence.

[25] Because we affirm the administrative law judge's finding that the evidence in this case is insufficient to establish that the miner's death was due to pneumoconiosis, we need not address claimant's argument that the administrative law judge erred in finding that the miner did not suffer from clinical or legal pneumoconiosis at 20 C.F.R. §718.202(a). *See Larioni*, 6 BLR at 1-1278.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge