BRB No. 00-0453 BLA

OLA MAE PRICE (Widow of WILLIAM C. PRICE)	)	
Claimant-Respondent	)	
v.	)	
CONSOLIDATION COAL COMPANY	)	DATE ISSUED:
Employer-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Order On Remand Granting Benefits of John C. Holmes, Administrative Law Judge, United States Department of Labor.

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

Douglas A. Smoot and Kathy L. Snyder (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Order On Remand Granting Benefits (97-BLA-1676) of Administrative Law Judge John C. Holmes 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). This case is before the Board for the

[1] Claimant is the surviving spouse of the miner, William Price, who died on January 8, 1997, Director's Exhibit 4. The miner had filed a claim on February 20, 1985, Director's Exhibit 21. In a Decision and Order issued on June 13, 1989, Administrative Law Judge Giles J. McCarthy found forty-one years and one month of coal mine employment

second time. In the Order On Remand Granting Benefits, at issue herein, the administrative

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established and adjudicated the miner's claim pursuant to 20 C.F.R. Part 718. Judge McCarthy found the existence of pneumoconiosis established by the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1) and by the medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4), as well as pneumoconiosis arising out of coal mine employment established pursuant to 20 C.F.R. §718.203(b). Finally, Judge McCarthy found total disability due to pneumoconiosis established pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, benefits were awarded.

Employer appealed and the Board affirmed the award of benefits, *Price v. Consolidation Coal Co.*, BRB No. 89-2389 BLA (Sep. 24, 1991)(unpub.). In relevant part, the Board affirmed Judge McCarthy's finding that the existence of pneumoconiosis was established by the medical opinion evidence pursuant to Section 718.202(a)(4) and, therefore, declined to address Judge McCarthy's findings pursuant to Section 718.202(a)(1). The Board also affirmed Judge McCarthy's findings as to the length of the miner's coal mine employment and that pneumoconiosis arising out of coal mine employment was established pursuant to Section 718.203(b). Employer did not seek any further review of the award of benefits in the miner's claim. Subsequent to the miner's death, claimant filed a survivor's claim on January 31, 1997, Director's Exhibit 1, at issue herein.

[2] Originally, in a Decision and Order issued on May 18, 1998, the administrative law judge credited the miner with approximately forty-two years of coal mine employment and adjudicated the survivor's claim pursuant to 20 C.F.R. Part 718. Initially, since new medical evidence had been introduced in the survivor's claim, the administrative law judge declined to apply the doctrine of collateral estoppel to hold that relitigation of the issue of pneumoconiosis arising out of coal mine employment was precluded in light of the Board's previous affirmance of the findings in the miner's claim that the existence of pneumoconiosis was established pursuant to Section 718.202 and that pneumoconiosis arising out of coal mine employment was established pursuant to Section 718.203(b). The administrative law judge found the existence of pneumoconiosis as more broadly defined by the Act and regulations established, *see* 30 U.S.C. §902(b); 20 C.F.R. §718.201; 20 C.F.R. §718.202(a)(1), (4), and death due to pneumoconiosis established pursuant to 20 C.F.R. §718.205(c). Accordingly benefits were awarded.

Employer appealed and the Board affirmed the administrative law judge's finding as to the length of the miner's coal mine employment, but vacated the administrative law judge's findings pursuant to Sections 718.202(a)(1) and (4) and 718.205(c) and remanded the case for reconsideration. *Price v. Consolidation Coal Co.*, BRB No. 98-1162 BLA (May 28, 1999)(unpub.). In addition, as claimant asserted, the Board held that the administrative law judge erred in declining to apply the doctrine of collateral estoppel in regard to the issue of pneumoconiosis arising out of coal mine employment. Thus, the Board also remanded the case for the administrative law judge to first determine whether collateral estoppel applies according to the criteria enunciated by the United States Court of Appeals for the Fourth

law judge initially found that the doctrine of collateral estoppel did not preclude the relitigation of the issue of the existence of pneumoconiosis in this case. Nevertheless, the administrative law judge found the existence of pneumoconiosis was established by the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1) and that pneumoconiosis arising out of coal mine employment was established, *see* 20 C.F.R. §718.203(b). Finally, the administrative law judge found death due to pneumoconiosis established pursuant to 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 pneumoconiosis established pursuant to Section 718.202(a) and in finding death due to pneumoconiosis established pursuant to Section 718.205(c). Claimant responds, urging that the administrative law judge's Order On Remand Granting Benefits be affirmed. The Director, Office of Workers' Compensation Programs, as a party-in-interest, has not responded to this appeal.

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

In order to establish entitlement in this survivor's claim filed after January 1, 1982, in which the miner had not been awarded benefits on a claim filed prior to January 1, 1982, *see* 30 U.S.C. §§901; 932(1), claimant must establish the existence of pneumoconiosis, *see* 20 C.F.R. §718.202; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988), and that the miner's death was due to pneumoconiosis, *see* 20 C.F.R. §§718.1; 718.205(c); *Neeley*, *supra*; *cf. Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989), which arose out of coal mine employment, *see* 20 C.F.R. §718.203; *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Moreover, the United States

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Circuit, within whose jurisdiction this case arises, in *Sedlack v. Braswell Services Group, Inc.*, 134 F.3d 219 (4th Cir. 1998) and *Sandberg v. Virginia Bankshares, Inc.*, 979 F.2d 332 (4th Cir. 1992), *see also Ramsay v. INS*, 14 F.3d 206 (4th Cir. 1994); *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134 (1999)(*en banc*), thereby precluding relitigation of the issue of pneumoconiosis arising out of coal mine employment.

[3] As the administrative law judge properly found in his original Decision and Order, the presumptions at Section 411(c)(2) of the Act, 30 U.S.C. §921(c)(2), as implemented by 20 C.F.R. §718.303, and at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, are inapplicable to this survivor's claim filed after January 1, 1982, *see* 20 C.F.R. §§718.303(c); 718.305(a), (e); Director's Exhibit 1; 1998 Decision and Order at 4. In addition, the presumption at Section 411(c)(5) of the Act, 30 U.S.C. §921(c)(5), as implemented by 20 C.F.R. §718.306, is inapplicable to this survivor's claim filed after January 1, 1982, *see* 20 C.F.R. §718.306(a).

Court of Appeals for the Fourth Circuit, wherein this case arises, has held that, pursuant to 20 C.F.R. §718.205(c)(2), pneumoconiosis substantially contributes to death if it hastens the miner's death, *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

Initially, the administrative law judge found that the doctrine of collateral estoppel did not preclude the relitigation of the issue of the existence of pneumoconiosis in this survivor's claim. Collateral estoppel forecloses "the relitigation of issues of fact or law that are identical to issues which have been actually determined and necessarily decided in prior litigation in which the party against whom [issue preclusion] is asserted had a full and fair opportunity to litigate." *Ramsay v. INS*, 14 F.3d 206, 210 (4th Cir. 1994); *Virginia Hosp. Ass'n v. Baliles*, 830 F.2d 1308, 1311 (4th Cir. 1987); *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-137 (1999)(*en banc*). For collateral estoppel to apply in the present case, which arises within the jurisdiction of the Fourth Circuit, claimant must establish that:

(1) the issue sought to be precluded is identical to one previously litigated;
(2) the issue was actually determined in the prior proceeding;
(3) the issue was a critical and necessary part of the judgment in the prior proceeding;
(4) the prior judgment is final and valid; and
(5) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue in the previous forum.

See Sedlack v. Braswell Services Group, Inc., 134 F.3d 219 (4th Cir. 1998); *Sandberg v. Virginia Bankshares, Inc.*, 979 F.2d 332 (4th Cir. 1992); *Ramsey*, *supra*; *Hughes*, *supra*.

The administrative law judge found the first four criteria established in regard to the issue of the existence of pneumoconiosis when considering both the prior miner's claim and the survivor's claim, but the administrative law judge further found that claimant did not establish in the survivor's claim that employer had had a full and fair opportunity to litigate the existence of pneumoconiosis in the previous miner's claim. Order On Remand at 13-14. While noting that it was not an abuse of the regulatory "process," the administrative law judge found that an autopsy, being the best evidence as to the presence or absence of pneumoconiosis, was not performed and submitted in the subsequent survivor's claim at the sole discretion of the survivor claimant, while new medical evidence had been introduced. Thus, the administrative law judge held that it "appears manifestly unjust" to hold the issue of the existence of pneumoconiosis as established against employer in the survivor's claim

[4] Inasmuch as the miner's most recent coal mine employment was performed in Virginia, *see* Director's Exhibit 21, the instant case arises within the jurisdiction of the Fourth Circuit, *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989).

merely because employer took the "reasonable and responsible course" of not further contesting the issue in the miner's claim. In addition, the administrative law judge found that consideration of the issue of the existence of pneumoconiosis was not precluded in the survivor's claim because a "new claim" was filed "by a separate party with a new requirement for proving all elements of entitlement" and because it was not clear that the Board had vacated the administrative law judge's original determination that collateral estoppel did not apply to the issue of the existence of pneumoconiosis in its original Decision and Order in this case.

Employer contends that, as the administrative law judge stated, the administrative law judge's determination in his original Decision and Order that collateral estoppel did not apply to the issue of the existence of pneumoconiosis in this case was not previously vacated by the Board in its original Decision and Order in this case. In any event, employer contends that the administrative law judge's determination that collateral estoppel did not apply to the issue of the existence of pneumoconiosis was correct because new evidence was submitted in the survivor's claim and in light of the fact that an autopsy was not submitted in the survivor's claim was the claimant's decision alone to make, such that to apply collateral estoppel would deprive employer of the due process opportunity to confirm or rebut the existence of pneumoconiosis. In response, claimant contends that there is no regulatory requirement that the existence of pneumoconiosis be established based on autopsy evidence in a survivor's claim and, therefore, contends that, as the evidence submitted in the survivor's claim is the same kind of evidence that was relied on in the miner's claim, collateral estoppel should apply to the issue of the existence of pneumoconiosis in this case.

Contrary to the administrative law judge's findings and employer's contention, the Board held in its previous Decision and Order that "as claimant asserts," the administrative law judge "erred in declining to apply the doctrine of collateral estoppel"in regard to the issue of pneumoconiosis arising out of coal mine employment in his original Decision and Order, *see Price*, BRB No. 98-1162 BLA at 6. Moreover, contrary to the administrative law judge's finding, the standards of proof regarding the existence of pneumoconiosis are identical in a living miner's claim filed under Part 718 and a survivor's claim filed under Part 718, inasmuch as a claimant, in either a living miner's case or a survivor's case, must establish the existence of pneumoconiosis in accordance with the same standard pursuant to Section 718.202(a) in order to establish entitlement to benefits, *see* 20 C.F.R. §§718.201, 718.202(a); *Trumbo*, *supra*; *Neeley*, *supra*.

Nevertheless, as employer notes, subsequent to the issuance of the administrative law judge's Order On Remand, the Fourth Circuit held that, based on the statutory language at 30 U.S.C. §923(b), all relevant evidence is to be considered together rather than merely within discrete subsections of 20 C.F.R. §718.202(a)(1)-(4) in determining whether claimant has met her burden of establishing the existence of pneumoconiosis by a preponderance of all of the evidence, *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR (4th Cir. 2000). However, in affirming the award of benefits in the miner's claim, the Board affirmed only

the finding that the existence of pneumoconiosis was established by the medical opinion evidence pursuant to Section 718.202(a)(4), and declined to address Judge McCarthy's findings regarding the x-ray evidence pursuant to Section 718.202(a)(1) in accordance with the Board's holding in *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985), that establishing pneumoconiosis under one of the four methods pursuant to Section 718.202(a)(1)-(4) obviates the need to do so under any of the other methods. Director's Exhibit 21; *Price*, BRB No. 89-2389 BLA at 3 n. 4.

Consequently, in light of the change in law enunciated in *Compton*, which overruled the Board's holding in *Dixon*, *supra*, the issue of whether the existence of pneumoconiosis has been established pursuant to Section 718.202(a), that claimant seeks to preclude in the present survivor's claim pursuant to the doctrine of collateral estoppel, is not identical to the one previously litigated and actually determined in the miner's claim, *see Sedlack*, *supra*; *Sandberg*, *supra*; *Ramsey*, *supra*; *Hughes*, *supra*. Thus, inasmuch as each of the prerequisites for application of the doctrine of collateral estoppel are not present, the doctrine of collateral estoppel is not applicable in this survivor's claim regarding the existence of pneumoconiosis pursuant to Section 718.202(a), *see Hughes*, *supra*.

On the merits, the administrative law judge found the existence of pneumoconiosis established by the x-ray evidence pursuant to Section 718.202(a)(1) and held that, as Section 718.202(a) "provides alternate means of establishing" the existence of pneumoconiosis, *see Dixon*, *supra*, he need not discuss the relevant medical opinion evidence addressing the existence of pneumoconiosis under Section 718.202(a), Order On Remand at 14-15. As employer notes, in light of the change in law declared in *Compton*, the administrative law judge erred in finding the existence of pneumoconiosis established pursuant to Section

[5] Inasmuch as the burden of proof to establish the existence of pneumoconiosis is now different in the survivor's claim from that applied in the miner's claim, *see Compton*, *supra*, the issue is not identical to the one previously litigated and actually determined in the miner's claim. Hence the administrative law judge correctly determined the doctrine of collateral estoppel did not apply and we need not address his alternative finding that claimant also did not establish in the survivor's claim that employer had a full and fair opportunity to litigate the existence of pneumoconiosis in the previous miner's claim because an autopsy was not performed at the sole discretion of the survivor claimant and because new medical evidence had been introduced in the subsequent survivor's claim, *see Sedlack*, *supra*; *Sandberg*, *supra*; *Ramsey*, *supra*; *Hughes*, *supra*.

Moreover, inasmuch as the administrative law judge's finding that pneumoconiosis arising out of coal mine employment was established, *see* 20 C.F.R. §718.203(b); *Boyd*, *supra*; *see also Sedlack*, *supra*; *Sandberg*, *supra*; *Ramsey*, *supra*; *Hughes*, *supra*, Order On Remand at 15, has not been challenged by employer on appeal, it is affirmed, *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

718.202(a)(1), by the x-ray evidence alone. Consequently, we vacate the administrative law judge's finding pursuant to Section 718.202(a)(1) and remand the case for reconsideration of all relevant evidence under Section 718.202(a) in accordance with the standard enunciated in *Compton*, *supra*. Moreover, inasmuch as the administrative law judge's finding at Section 718.202(a) is determinative of his finding that death due to pneumoconiosis was established under Section 718.205(c), *see Trumbo*, *supra*; *Neeley*, *supra*; Order On Remand at 15-18, the administrative law judge's finding at Section 718.205(c) is also vacated. If the administrative law judge finds the existence of pneumoconiosis established pursuant to Section 718.202(a) on remand, he should then reconsider whether death due to pneumoconiosis is established pursuant to Section 718.205(c).

In order to avoid any possible repetition of error on remand, we address employer's specific contentions regarding the administrative law judge's findings under Sections 718.202(a)(1) and 718.205(c). Initially, in considering the x-ray evidence pursuant to Section 718.202(a)(1), the administrative law judge adopted Judge McCarthy's finding that the x-ray evidence from the miner's claim, which is part of the record in the survivor's claim, *see* Director's Exhibit 21, was sufficient to establish the existence of pneumoconiosis. The administrative law judge also stated that, "[s]imilar to a modification procedure" pursuant to 20 C.F.R. §725.310, he was to consider whether the new x-ray evidence from the survivor's claim warranted a "contradictory finding based on a material change in condition or a mistake in fact." Order on Remand at 14.

As employer contends, the administrative law judge erred in adopting Judge McCarthy's weighing of the x-ray evidence from the miner's claim and in considering whether the new x-ray evidence from the survivor's claim warranted a "contradictory" finding. On remand, the administrative law judge should consider all relevant evidence from both the miner's claim and the survivor's claim together under Section 718.202(a) in determining whether claimant has met her burden of establishing the existence of pneumoconiosis by a preponderance of all of the evidence, *see Compton*, *supra*

In addition, as employer contends, the administrative law judge apparently did not consider all of the relevant x-ray evidence of record when summarizing the x-ray evidence of record and/or when weighing the x-ray evidence pursuant to Section 718.202(a), *see* Order on Remand at 2-5 and 14-15; *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985). A review of the administrative law judge's Order On Remand does not indicate that the administrative law judge considered negative readings from the miner's claim of a January 23, 1985, x-ray from Drs. Felson and Wiot, or of x-rays dated March 1,1982, June 24, 1983, and July 6, 1983, from Dr. Wiot, or a reading of an x-ray dated August 22, 1985, from Dr. Nicholas or negative readings of an x-ray dated April 16, 1985, from Drs. Bassham and Gaziano, *see* Director's Exhibit 21 at 12-13, 16, 21-22. In addition, the administrative law judge's Order On Remand does not indicate that the administrative law judge considered readings from the survivor's claim of x-rays dated June 16, 1995, March 6, 1996, and January 3, 1997, from Dr. Ward, a reading of an x-ray dated August 2, 1995, from Dr. Favelukes, and a reading of an x-

ray dated January 8, 1997, from Dr. Dunst, *see* Director's Exhibit 5 at 18-20, 29, 41.

Finally, when weighing the x-ray evidence pursuant to Section 718.202(a), the administrative law judge gave less weight to "all" of the readings that the administrative law judge did consider from Dr. Wiot because he had provided no explanation for apparently contradictory readings of four x-rays. A review of the record indicates that Dr. Wiot read x-rays dated October 6, 1993, March 2, 1995, March 30, 1995, and August 2, 1995, as negative on one occasion, *see* Employer's Exhibit 5, and as unreadable on a subsequent occasion, *see* Employer's Exhibit 8. The administrative law judge noted that it was "unclear" whether Dr. Wiot had performed second readings of the same x-ray or had read separate x-rays taken on the same day, Order On Remand at 4 n. 2. Thus, the administrative law judge gave less weight to negative x-ray readings from Dr. Wiot, even where Dr. Wiot had not also provided a contradictory reading, including an x-ray dated July 25, 1995, *see* Employer's Exhibit 8.

Dr. Wiot did read an "AP" x-ray film dated August 2,1995, as negative, *see* Employer's Exhibit 5, and subsequently read an "AP" x-ray film dated August 2, 1995, as unreadable, *see* Employer's Exhibit 8. Thus, as the administrative law judge found, it is unclear whether Dr. Wiot had performed two readings of the same x-ray dated August 2, 1995, or had read separate x-rays taken on the same day. As employer contends, a review of the record indicates that Dr. Wiot originally read as negative, what he characterized as "PA" x-ray films dated October 6, 1993, March 2, 1995, and March 30, 1995, *see* Employer's Exhibit 5, whereas he subsequently found unreadable, what he characterized as "lateral" x-ray films with the same dates, *see* Employer's Exhibit 8. Thus, Dr. Wiot indicated that he had read separate "PA" x-rays dated October 6, 1993, March 2, 1995, and March 30, 1995, as well as "lateral" x-rays dated October 6, 1993, March 2, 1995, and March 30, 1995, *see Tackett*, *supra*. Thus, the administrative law judge's discrediting of Dr. Wiot's x-ray readings is vacated and on remand the administrative law judge should reconsider and/or reconcile Dr. Wiot's separate characterization of both the "PA" and "lateral" x-ray films dated October 6, 1993, March 2, 1995, and March 30, 1995, and more fully explain the weight he gives Dr. Wiot's x-ray readings, *see Tenney v. Badger Coal Co.*, 7 BLR 1-589 (1984).

Pursuant to Section 718.205(c), the administrative law judge considered the relevant medical opinion evidence of record, Order On Remand at 15-18. The administrative law judge noted that five physicians, including Drs. Zaldivar, Employer's Exhibit 11, Fino, Employer's Exhibits 7, 11; Director's Exhibit 21, Morgan, Employer's Exhibits 2, 11; Director's Exhibit 21, Endres-Bercher, Employer's Exhibit 2; Director's Exhibit 21, and Castle, Employer's Exhibits 2, 6, attributed the cause of the miner's death solely to smoking. On the other hand, the administrative law judge noted that Dr. Cardona, Director's Exhibits 4-5; Claimant's Exhibits 1-2, the miner's treating physician, attributed the cause of the miner's death solely to coal workers' pneumoconiosis, whereas Dr. Rasmussen, Claimant's Exhibit 2; Director's Exhibit 21, and, in a joint report, Drs. Bueno and Ducatman, Claimant's Exhibit 4, attributed the cause of the miner's death to both smoking and coal workers'

pneumoconiosis.

Initially, the administrative law judge gave less weight both to the opinion of Dr. Zaldivar, because his opinion that the miner did not have pneumoconiosis was contrary to the administrative law judge's finding and to the opinion of Dr. Morgan, in part, because it was based on a lack of radiographic evidence of pneumoconiosis. Similarly, the administrative law judge found the diagnosis of coal workers' pneumoconiosis, by Drs. Bueno and Ducatman, based on x-ray evidence, consistent with the administrative law judge's finding under Section 718.202(a). However, the administrative law judge failed to consider that both Drs. Zaldivar and Morgan opined that even if the miner had pneumoconiosis, their opinions as to the cause of the miner's impairment and/or death would not change, *see* Employer's Exhibits 2, 11. This was error. *See Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995). Furthermore, the administrative law judge's analysis of the medical opinion evidence or causation was premised on his finding that the existence of pneumoconiosis was established under Section 718.202(a) and that finding is vacated, *see Compton*, *supra*. Hence, the administrative law judge's discrediting of the opinions of Drs. Zaldivar and Morgan and crediting the opinion of Drs. Bueno and Ducatman pursuant to Section 718.205(c) is also vacated, *see Trumbo*, *supra*; *Neeley*, *supra*.

Ultimately, the administrative law judge gave greatest weight to the opinions of Drs. Rasmussen and Bueno and Ducatman, that the cause of the miner's death was due to both smoking and coal workers' pneumoconiosis, "in light of their qualifications" and as the administrative law judge found their opinions reasoned, supported by the evidence and "most in line with the medical records," and he gave less weight to the opinions of the physicians attributing the miner's death solely to smoking, characterizing them as "misguided." As employer contends, the administrative law judge's analysis of the relevant medical opinion evidence of record and credibility determinations under Section 718.205(c) are irrational and inconsistent, *see Revnack v. Director, OWCP*, 7 BLR 1-771 (1985); *see also Wike v. Bethlehem Mines Corp.*, 7 BLR 1-593 (1984).

The administrative law judge's assignment of greater weight to the opinions of Drs. Rasmussen and Bueno and Ducatman in light of their qualifications and because he found them reasoned and supported by the evidence is inconsistent with his assignment of less weight to the opinions of Drs. Zaldivar, Fino Castle and Endres-Bercher, as the administrative law judge also found that their opinions were reasoned and/or supported by the evidence and that they had similar, greater and/or the same qualifications, *see Revnack*, *supra*; *see also Wike*, *supra*. In addition, although the administrative law judge noted the qualifications of Drs. Bueno and Ducatman as board-certified physicians, a review of the record does not indicate their qualifications, *see Tackett*, *supra*. Moreover, the administrative law judge did not consider the opinion of Dr. Hynes, one of the miner's treating physicians,

[6] The administrative law judge also gave less weight to Dr. Cardona's opinion, as he ignored the affects of the miner's smoking.

who opined that the cause of the miner's death was due, in part, to "black lung," *see* Director's Exhibit 5; *Tackett, supra*.

Consequently, inasmuch as the administrative law judge failed to properly resolve the conflicts in the relevant evidence of record under Section 718.205(c), *see Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989), we also remand the case for reconsideration under Section 718.205(c) and further explanation, *see Tanner v. Freeman United Coal Co.*, 10 BLR 1-85 (1987); *McGinnis v. Freeman United Coal Mining Co.*, 10 BLR 1-4 (1987). On remand, the administrative law judge must provide a full, detailed opinion which complies with the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(a), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), and which fully explains the specific bases for his decision, the weight assigned to the evidence and the relationship he finds between the evidence and his legal and factual conclusions, *see Tenney, supra*, and the administrative law judge should resolve the inconsistency in his weighing of the relevant medical opinion evidence when reconsidering Section 718.205(c), *see Revnack, supra*.

Accordingly, the administrative law judge's Order On Remand Granting Benefits is affirmed in part, vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge