BRB No. 02-0251 BLA

CECILIA SOUBIK (Widow of MICHAEL T. SOUBIK)	)	
Claimant-Petitioner	)	
v.	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order On Remand of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Neil A. Grover, Harrisburg, Pennsylvania, for claimant.

Sarah M. Hurley (Eugene Scalia, 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: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-0962) of Administrative Law Judge Paul H. Teitler denying 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).[1] Claimant is the widow of the miner, Michael T. Soubik, who died on April 16, 1986. Director's Exhibit 2. The miner originally filed a claim on August 11, 1980. In a Decision and Order issued on January 20, 1987, Administrative Law Judge Francis J.

[1] 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.

Haynes found at least twenty-five years of coal mine employment established, that the existence of pneumoconiosis was conceded by the Director, Office of Workers' Compensation Programs (the Director), and that pneumoconiosis arising out of coal mine employment was established, but found that total disability was not established. Judge Haynes further found that complicated pneumoconiosis was not established and, therefore, found that claimant was not entitled to the irrebuttable presumption of totally disabling pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304. Judge Haynes also found that there was no reason to believe that the miner's death resulted from pneumoconiosis. Accordingly, benefits were denied. The Board affirmed Judge Haynes' finding that total disability was not established and therefore, affirmed the denial of benefits. *Soubik v. Director, OWCP*, BRB No. 87-0355 BLA (Oct. 27, 1988)(unpub.). Claimant took no further timely action on the miner's claim.

Claimant filed a survivor's claim on August 6, 1986. Director's Exhibit 12. In a Decision and Order issued on November 24, 1989, Administrative Law Judge Thomas W. Murrett found that the existence of pneumoconiosis was conceded by the Director, and that pneumoconiosis arising out of coal mine employment was established, but found that death due to pneumoconiosis was not established. Benefits were, accordingly, denied.

Claimant appealed without the assistance of counsel and the Board affirmed Judge Murrett's finding that death due to pneumoconiosis was not established and therefore, affirmed the denial of benefits. *Soubik v. Director, OWCP*, BRB No. 90-0323 BLA (Mar. 27, 1991)(unpub.). Claimant's subsequent motion for reconsideration was also denied. *Soubik v. Director, OWCP*, BRB No. 90-0323 BLA (Oct. 9, 1991)(unpub. order).

In a letter received by the Department of Labor (DOL) on November 12, 1991, claimant indicated that she wished to submit additional evidence in support of her claim. In a letter dated December 4, 1991, DOL responded to claimant telling her that her letter would be treated as a request for modification. By letter dated March 2, 1992, claimant was given until April 2, 1992 to submit any additional evidence. Director's Exhibit 12. The record shows that DOL denied claimant's motion for modification by a letter date stamped April 8, 1992, because she failed to submit any new evidence. Director's Exhibit 12. The record also shows, however, that the DOL letter which claimant actually received, advising her of the decision to deny benefits, was undated. The record also fails to reflect the date that claimant actually received the letter. *See* Director's Exhibit 10; Claimant's Exhibit 4. On April 21, 1992, claimant requested the case file so that it could be reviewed by one of the miner's attending physicians for purposes of modification. On May 7, 1992, the case file was sent to claimant by DOL. No further action was taken by either claimant or DOL until May 11, 1995, when claimant filed a new medical opinion from Dr. Karlavage and requested reconsideration of her claim which was denied in 1992. Claimant's Exhibit 5; Director's Exhibit 3. On May 15, 1995, DOL informed claimant that because claimant had taken no

further action after DOL denied claimant's prior motion for modification on April 8, 1992, the case was considered administratively closed on April 8, 1993, thereby precluding further action on the claim. *Id*.

Claimant filed a new survivor's application for benefits on May 26, 1995. Director's Exhibit 1. In a Decision and Order On Modification Denying Benefits, issued on July 7, 1997, the administrative law judge considered claimant's new survivor's claim a request for modification based on a mistake in a determination of fact, found that death due to pneumoconiosis was not established, and denied benefits. Director's Exhibit 12. In making this finding, the administrative law judge considered the evidence, including testimony from claimant, the miner's sons, and the miner's sister-in-law, concerning the miner's breathing difficulties prior to his death; the death certificate;[2] and the opinions of Drs. Wagner, Karlavage and Spagnolo regarding the cause of the miner's death. The administrative law judge found Dr. Wagner's opinion, that pneumoconiosis "possibly worsened" the miner's cardiac condition and "could have" contributed to the miner's death, to be equivocal and vague, and Dr. Karlavage's opinion, that pneumoconiosis hastened the miner's death, not to be well documented or reasoned as it was based on the report of the miner's relatives, not the doctor's own observations or review of the medical records.[3] The administrative law judge determined, however, that Dr. Spagnolo's opinion, that pneumoconiosis was not a contributing cause of the miner's death, based on a review of the evidence, was documented and reasoned. Director's Exhibit 14; Director's Exhibit 8; Claimant's Exhibit 2. Accordingly, the administrative law judge concluded that claimant failed to establish that the miner's death was hastened by pneumoconiosis.

Claimant appealed. The Board initially noted that the administrative law judge erred in treating claimant's second survivor's claim as a request for modification, rather than a

[2] The death certificate, certified by Dr. Wagner, stated the cause of death as acute myocardial infarction with complete heart block and cardiogenic shock listed as other significant conditions. Director's Exhibit 2.

[3] Dr. Karlavage stated that upon "further inquiry, the [miner's] family has discovered directly from the attending physician that coal workers' pneumoconiosis was involved in his death." Director's Exhibit 3; Claimant's Exhibit 1.

duplicate survivor's claim. The Board also rejected claimant's contention that the previously denied miner's claim was subject to modification since claimant had not filed a timely request for modification on the miner's claim. Nonetheless, because the administrative law judge considered entitlement on the merits, the Board stated that it would review the administrative law judge's findings on the merits. *Soubik v. Director, OWCP*, BRB No. 97-1508 BLA (July 28, 1998)(unpub.). Considering the administrative law judge's findings on the merits, the Board concluded that because the administrative law judge properly discredited the only evidence supportive of a finding of entitlement under Section 718.205(c), *i.e.*, the opinions of Drs. Wagner and Karlavage, the administrative law judge's finding that death due to pneumoconiosis was not established pursuant to Section 718.205(c) must be affirmed.

Claimant appealed to the United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises. The court, with one judge dissenting, vacated the decision of the Board and remanded the case for consideration of "the lay testimony of record in light of the balance of the record." *Soubik v. Director, OWCP*, No. 98-6338 (3rd Circuit, June 25, 1999)(Wellford, J., dissenting)(unpub.). Initially, the majority held (and the dissenting judge agreed) that while the instant claim should have been automatically denied as a duplicate survivor's claim, because the administrative law judge had considered the claim on the merits, it would review the administrative law judge's decision on the merits.[4]

[4] Because the United States Court of Appeals for the Third Circuit remanded the case for reconsideration of the merits pursuant to 20 C.F.R. §718.205(c), and the Director does not contend that the instant claim is a duplicate survivor's claim, we treat this claim as a request for modification.

Regarding the merits, the Third Circuit panel majority noted that the lay testimony of record from claimant, the miner, the miner's son, brother-in-law, sister-in-law and a neighbor, all supported the contention that the miner suffered from increasing shortness of breath and difficulty in walking and climbing steps and "clearly established that at the time of his death, [the miner] was not able to perform the simplest of tasks, such as climbing steps, because of his difficulty in breathing and a significant lack of energy." *Soubik*, slip op. at 7. The majority further noted that in a survivor's claim, claimant may prove that the miner's death was due to pneumoconiosis by medical evidence alone, non-medical evidence alone, or the combination of medical and non-medical evidence, citing *Hillibush v. U.S. Department of Labor*, 853 F.2d 197, 11 BLR 2-223 (3d Cir. 1988).

In any event, the record does not appear to support a finding that the instant claim is a duplicate survivor's claim. Claimant's timely request on April 21, 1992, that the case file be sent to her for possible modification, after the prior denial of the 1986 survivor's claim on April 8,1992, served to keep claimant's original survivor's claim viable. Ultimately, no action was taken by the Department of Labor on claimant's pending 1986 survivor's claim until claimant filed another survivor's claim on May 26, 1995, Director's Exhibit 1, which therefore merged with her original 1986 survivor's claim, *see* 20 C.F.R. §725.309(d)(2000); *Madrid v. Coast Marine Construction Co.*, 22 BRBS 148 (1989); *Garcia v. Director, OWCP*, 12 BLR 1-24 (1988); *Tackett v. Howell and Bailey Coal Co.*, 9 BLR 1-181 (1986); *Chadwick v. Island Creek Coal Co.*, 7 BLR 1-883 (1985).

The majority held that the administrative law judge and the Board failed to mention this lay opinion testimony and failed to consider whether, because the miner undoubtedly had pneumoconiosis and because people close to the miner observed how "pneumoconiosis severely affected the quality" of the miner's life, pneumoconiosis may have hastened the miner's death. *Soubik*, slip op. at 8. The majority further noted that while Dr. Karlavage was the miner's "treating physician," Dr. Spagnolo never saw or treated the miner, but the administrative law judge and the Board "nevertheless relied heavily on Dr. Spagnolo's opinion."[5] *Soubik*, slip op. at 9. The majority concluded that the lay testimony could be enough to satisfy claimant's burden of proof that pneumoconiosis hastened the miner's death, *see Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989), as it offered "quite graphic" and "detailed" discussion of the state of the miner's health and "strongly suggested" that the miner's pulmonary impairment played at least some role in his failing health and ultimate death, "[b]ut neither the administrative law judge nor the Board appears to have given it any consideration at all." *Soubik*, slip op. at 10. Thus, "[s]ince the lay evidence here suggests" that the miner's death was "hastened at least briefly" by pneumoconiosis, the majority vacated the Board's decision and remanded the case for consideration of "the lay testimony of record in light of the balance of the record."[6] *Soubik*, slip op. at 10. On remand from the Third Circuit, the administrative law judge again found

[5] Contrary to the majority's characterization of the Board's previous decision, however, the Board affirmed the administrative law judge's finding that death due to pneumoconiosis was not established pursuant to Section 718.205(c) because the administrative law judge properly discredited the only evidence supportive of a finding of entitlement under Section 718.205(c), and not because the administrative law judge credited the opinion of Dr. Spagnolo, which did not support a finding of entitlement under Section 718.205(c). *Soubik*, BRB No. 97-1508 BLA at 4.

[6] The dissent would have affirmed the administrative law judge's findings on the merits, noting that the lay testimony did not provide any new evidence that would support entitlement. *Soubik*, No. 98-6338.

the evidence of record insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c). Accordingly, benefits were again denied.

On appeal, claimant contends that the administrative law judge erred in finding the relevant medical opinion and lay evidence of record insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c). The Director responds, urging that the administrative law judge's Decision and Order On Remand denying benefits be affirmed.

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).

Pursuant to Section 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §922, as incorporated into the Act by 30 U.S.C. §932(a) and as implemented by 20 C.F.R. §725.310 (2000), *see* 20 C.F.R. §725.2(c), a party may request modification of a denial on the grounds of a change in conditions or because of a mistake in a determination of fact. However, the sole ground for modification in a survivor's claim is that a mistake in a determination of fact was made, since there cannot be a change in the deceased miner's condition. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989). If a claimant merely alleges that the ultimate fact was wrongly decided, the administrative law judge may, if he chooses, accept this contention and modify the final order accordingly (*i.e.*, "There is no need for a smoking gun factual error, changed conditions or startling new evidence."), *see Keating v. Director, OWCP*, 71 F.3d 1118, 1123, 20 BLR 2-53, 2-62 (3d Cir. 1995), *quoting Jessee v. Director, OWCP*, 5 F.3d 723, 725, 18 BLR 2-26-28 (4th Cir. 1993). Moreover, the Third Circuit has held that pursuant to a petition for modification, the administrative law judge must review all evidence of record, both newly submitted evidence and evidence previously in the record, and determine whether there was any mistake of fact made in the prior adjudication, including the ultimate fact, *see Keating*, 71 F.3d at 1123, 20 BLR at 2-63.

In order to establish entitlement on the basis of this survivor's claim, which was filed after January 1, 1982, when the miner had not been awarded benefits prior to his death on a claim filed prior to January 1, 1982, *see* 30 U.S.C. §§901, 932(1); *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989), claimant must establish the existence of pneumoconiosis, 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),[7] which arose out of coal mine employment, 20 C.F.R.

[7] None of the available presumptions pursuant to 20 C.F.R. §718.303-306 are applicable, *see* 20 C.F.R. §718.202(a)(3). The presumptions at Section 411(c)(2) of the Act,

§718.203; *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988), and that the miner's death was due to pneumoconiosis, 20 C.F.R. §718.1; 718.205(c); *Neeley*, *supra*; *cf. Smith*, *supra*. Moreover, pursuant to 20 C.F.R. §718.205(c)(2), (5), pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. *See Lango v. Director, OWCP*, 104 F.3d 573, 576, 21 BLR 2-12, 2-18 (3d Cir. 1997); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).[8]

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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 Exhibits 1, 12. Moreover, 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 also inapplicable to this survivor's claim filed after January 1, 1982, *see* 20 C.F.R. §718.306(a). Director's Exhibits 1, 12. Finally, because there is no evidence of complicated pneumoconiosis in the record, the irrebuttable presumption of totally disabling pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, is inapplicable. *See* 20 C.F.R. §§718.205(c)(3), 718.304.

[8] Contrary to claimant's contention that the administrative law judge did not apply or consider the new, revised regulation at Section 718.205(c), the administrative law judge specifically considered claimant's survivor's claim under the new, revised Section 718.205(c), *see* Decision and Order On Remand at 9 n. 2, and, in any event, the new, revised

Section 718.205(c)(2), (5) provides, consistent with the Third Circuit's holdings in *Lango v. Director, OWCP*, 104 F.3d 573, 576, 21 BLR 2-12, 2-18 (3d Cir. 1997) and *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989) that pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death.

Claimant contends that the administrative law judge failed to adequately explain his crediting of the opinion of Dr. Spagnolo over the contrary, documented opinions of Drs. Wagner and Karlavage, as well as the corroborating lay testimony.[9] Contrary to claimant's contention, however, the administrative law judge weighed all of the relevant medical evidence and lay testimony under Section 718.205(c) and permissibly found that the opinion of Dr. Wagner that pneumoconiosis "possibly worsened" the miner's cardiac condition and "could have" contributed to the miner's death, could not establish that pneumoconiosis hastened the miner's death as it was equivocal. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). The administrative law judge also rationally found that Dr. Wagner's opinion that, the miner's pulmonary impairment could have contributed to the miner's cardiac condition and possibly worsened his heart condition, was not well documented or well-reasoned, given the normal objective pulmonary function study and blood gas study results of record. Similarly, the administrative law judge permissibly found Dr. Karlavage's opinion, that the miner was totally disabled prior to his death and that the miner's pneumoconiosis hastened his death, was not well-reasoned or documented in light of the normal pulmonary function study results taken in 1985 and 1986 and because his opinion was based only on the report of the miner's relatives and not his own review of the medical records. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *see also Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). The administrative law judge permissibly found that Dr. Karlavage's letter of February 22, 1995 stating that the miner had an "abnormal" pulmonary function study was inconsistent with Dr. Karlavage's earlier testimony on deposition that the

[9] Claimant also contends that the administrative law judge erred, on remand, in failing to provide claimant an opportunity to supplement the record and in failing to conduct a new hearing. A hearing on modification, however, was held in this case on May 6, 1997, and the administrative law judge considered and complied with the Third Circuit's remand instructions to consider "the lay testimony of record in light of the balance of the record." Decision and Order On Remand at 1-2, 4. Thus, as the record does not indicate that claimant filed any request or motion with the administrative law judge to supplement the record or to submit a brief on remand, we reject claimant's contention.

miner's pulmonary function studies were "normal." *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Puleo v. Florence Mining Co.*, 8 BLR 1-198 (1984).

Contrary to claimant's contention, the administrative law judge permissibly credited Dr. Spagnolo's opinion, that even if the miner had pneumoconiosis it did not contribute to his death, as reasoned and documented, because it was better supported by the normal objective pulmonary function study and blood gas study evidence of record, *see Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985), because it was based on a more thorough or complete review of the evidence of record, *see Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985), and because of Dr. Spagnolo's superior qualifications as a board-certified physician in pulmonary diseases, *see Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990)(*en banc* on recon.), *rev'd on other grds*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995); *Dillon v. Director, OWCP*, 11 BLR 1-113, 1-114 (1988); *Wetzel*, *supra*. Additionally, contrary to claimant's contention, the administrative law judge permissibly determined that Dr. Spagnolo's opinion could constitute substantial evidence even though he did not examine the miner, *see Evosevich v. Consolidation Coal Co.*, 789 F.2d 1021, 9 BLR 2-10 (3d Cir. 1986); *Cochran v. Consolidation Coal Co.*, 12 BLR 1-136 (1989); *Presley v. Sunshine, Inc.*, 8 BLR 1-410 (1985); *Ham v. Bethlehem Mines Corp.*, 8 BLR 1-3 (1985). The administrative law judge also permissibly discredited the only medical evidence supportive of a finding of entitlement under Section 718.205(c) from Drs. Wagner and Karlavage since there was no reason to credit their opinions over the opinion of Dr. Spagnolo: Dr. Wagner had not treated the miner for his respiratory problems and Dr. Karlavage had seen the miner on only three occasions over a six month period. *See Scott*, *supra*; *Wetzel*, *supra*;[10] *see also Mabe*, *supra*; *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984).

Finally, claimant contends that the administrative law judge did not properly weigh the corroborating lay testimony, in conjunction with the supportive medical evidence, in accordance with the Third Circuit's holding in this case, as well as the Third Circuit's holdings in *Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-215 (3d Cir. 1997), *Keating*, *supra*, and *Hillibush*, *supra*. The court's majority noted that in a survivor's claim, claimant may prove that the miner's death was due to pneumoconiosis by medical evidence alone, non-medical evidence alone, or the combination of medical and non-medical evidence,

[10] Although claimant contends that the administrative law judge did not apply or consider the new, revised regulation at 20 C.F.R. §718.104(d), the revised evidentiary quality standard at Section 718.104(d), which requires that special consideration be given to the report of a miner's treating physician's opinion and allows that such an opinion may be given controlling weight, applies only to evidence developed after January 19, 2001, *see* 20 C.F.R. §718.101(b), and, therefore, does not apply to any evidence in this case.

citing *Hillibush, supra*.

In response, the Director contends that the Third Circuit's holdings in *Hillibush* and *Keating*, are inapplicable to the instant case. The court held in those cases that a claimant in a survivor's claim may prove that the miner's death was due to pneumoconiosis by non-medical evidence alone, where there is no credible, contrary medical evidence. The Director contends that the administrative law judge permissibly found that Dr. Spagnolo's opinion constituted substantial, credible evidence that the miner's death was not due to or hastened by pneumoconiosis. As the Director contends, *Hillibush* and *Keating* are distinguishable from the instant case because they involve the merits of entitlement in survivor's claims pursuant to the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, whereas Judge Murrett and the Board stated that that presumption was inapplicable to this survivor's claim filed after January 1, 1982, *see* 20 C.F.R. §718.305(a), (e); Director's Exhibits 1, 12; 1989 Decision and Order at 4; *Soubik*, BRB No. 90-0323 BLA at 3, n. 2; *Soubik*, BRB No. 97-1508 BLA at 4.

In *Mancia*, the Third Circuit, in an opinion signed by one of the majority judges in this case, stated that:

> We realize that the regulations in effect when we decided *Hillibush* specifically provided that the finding of causation in a survivor's claim should be made based upon a consideration of "all relevant evidence." *Id*. at 202, while the current regulation is more restrictive. *See* 20 C.F.R. §718.205(c). [footnote omitted]. However, the change in the regulation does not allow the ALJ to ignore uncontradicted relevant lay testimony where it corroborates the medical testimony of a treating physician and is consistent with the medical records.

See Mancia, 130 F.3d at 588, 21 BLR at 2-232. Unlike *Mancia*, however, the administrative law judge in this case did not ignore the lay testimony, but found that it did not clearly establish that the deterioration in the miner's condition was due to pneumoconiosis or a pulmonary condition and found that it was outweighed by the well-reasoned and thorough opinion of Dr. Spagnolo, a highly qualified specialist. *See Scott, supra*; *Dillon, supra*; *Wetzel, supra*; *Stark, supra*; *Hall, supra*.

Moreover, the Third Circuit has held that a fact-finder may discredit as unreasoned the only medical opinions of record offered by a claimant to meet her burden in a survivor's claim under Section 718.205(c), when they do not adequately explain the basis for their conclusions. *See Lango, supra*. Thus, the administrative law judge's findings that death due to pneumoconiosis was not established and that a mistake in a determination of fact was not, therefore, established, are affirmed as rational and supported by substantial evidence.

Consequently, because we affirm the administrative law judge's finding that claimant failed to establish that pneumoconiosis contributed to or hastened the miner's death pursuant to Section 718.205(c), a requisite element of entitlement in a survivor's claim filed on or after January 1, 1982, *see* 30 U.S.C. §§901, 932(l); we affirm the administrative law judge's finding that entitlement under Part 718 is precluded, *see Lango*, 104 F.3d at 576, 21 BLR at 2-18; *Lukosevicz, supra*; *Neeley, supra*; *cf. Smith, supra*.

Accordingly, the administrative law judge's Decision and Order On Remand denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge