

BRB No. 04-0488 BLA

RACHEL M. ANDERSON )  
(Widow of ROGER ANDERSON) )  
 )  
Claimant-Respondent )  
 )  
v. )  
 )  
KELLYS CREEK RESOURCES )  
 )  
and )  
 )  
OLD REPUBLIC INSURANCE GROUP ) DATE ISSUED: 01/27/2005  
 )  
Employer/Carrier- )  
Petitioners )  
 )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order – Award of Survivor Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

W. William Prochot (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Award of Survivor Benefits (2002-BLA-0401) of Administrative Law Judge Richard T. Stansell-Gamm 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).<sup>1</sup> Based on the parties' stipulation, the administrative law judge credited the miner with 15.13 years of coal mine employment, Decision and Order at 3; September 12, 2001 Hearing Transcript at 16-17, and adjudicated this survivor's claim pursuant to 20 C.F.R. Part 718. Addressing the merits of the claim, the administrative law judge found that the autopsy evidence established the existence of pneumoconiosis arising out of the miner's coal mine employment. 20 C.F.R. §§718.202(a)(2), 718.203(b); Decision and Order at 7-8. The administrative law judge found that the medical evidence was insufficient to establish that the miner's death was due directly to pneumoconiosis or to complications of pneumoconiosis. However, the administrative law judge found that the medical opinion evidence established that pneumoconiosis was a substantially contributing cause of the miner's death. 20 C.F.R. §718.205(c); Decision and Order at 21-27. Accordingly, the administrative law judge awarded survivor's benefits.

On appeal, employer contends that the administrative law judge erred in finding the medical opinion evidence sufficient to establish that pneumoconiosis was a substantially contributing cause of the miner's death. Specifically, employer contends that the administrative law judge erred in failing to apply the standard set forth in *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003), in determining whether pneumoconiosis hastened the miner's death. In addition, employer contends that the administrative law judge erred in weighing the relevant medical opinions of record. Claimant has not submitted a response in this appeal. The Director, Office of Workers' Compensation Programs has filed a letter stating that he will not respond in this appeal.<sup>2</sup>

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<sup>1</sup> Claimant is the widow of the miner, Roger Anderson, who died on January 27, 1999. Director's Exhibits 1, 4. Claimant filed her survivor's claim on March 10, 1999. Director's Exhibit 1. A formal hearing was held before Administrative Law Judge Stuart Levin on September 12, 2001. Director's Exhibit 29. Judge Levin determined that the record was incomplete regarding the cause of the miner's death. Therefore, in a Decision and Order issued on April 22, 2002, Judge Levin remanded the case to the district director for further evidentiary development. Director's Exhibit 30. Following development of the record by the district director, the case was assigned to Administrative Law Judge Richard T. Stansell-Gamm (the administrative law judge). Based on an agreement of the parties, the administrative law judge issued an Order dated October 31, 2002, canceling the formal hearing and indicating that the case would be decided on the documentary record.

<sup>2</sup> The parties do not challenge the administrative law judge's decision to credit the miner with 15.13 years of coal mine employment, his finding that claimant is an eligible survivor under the regulations, or his findings pursuant to 20 C.F.R. §§718.202(a)(2),

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

In order to establish entitlement to survivor's benefits, claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). In survivor's claims filed on or after January 1, 1982, the miner's death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, if it was a substantially contributing cause or factor leading to the miner's death, if death was caused by complications of pneumoconiosis, or if the presumption relating to complicated pneumoconiosis set forth at Section 718.304 is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of death if it hastened the miner's death.<sup>3</sup> 20 C.F.R. §718.205(c)(5); *Williams*, 338 F.3d at 517-18, 22 BLR at 2-655; *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).

On appeal, employer contends that the administrative law judge did not apply the correct legal standard in determining that pneumoconiosis was a substantially contributing cause of the miner's death. Specifically, employer contends that the administrative law judge failed to determine whether the opinions of Drs. Morse and Peacock, which he credited as most probative, explained what "specifically defined process" reduced the miner's lifespan. Employer's Brief at 13. Employer further argues that the administrative law judge erred in relying on the opinions of Drs. Morse and Peacock based merely on these physicians' status as the miner's treating physicians. Employer's Brief at 13-15. In addition, employer contends that the administrative law judge erred in substituting his opinion for that of the medical experts in finding that

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718.203(b), 718.205(c)(1), (3). These findings are therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>3</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the miner's coal mine employment occurred in Tennessee. Director's Exhibit 2; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

pneumoconiosis was a substantially contributing cause of the miner's death. Employer's Brief at 18-19. These contentions have merit.

The United States Court of Appeals for the Sixth Circuit has held that pneumoconiosis "only 'hastens' a death if it does so through a specifically defined process that reduces the miner's life by an estimable time." *Williams*, 338 F.3d at 518, 22 BLR at 2-655. The record reflects that Drs. Morse and Peacock answered "Yes" to the question posed by claimant's counsel inquiring whether the miner "died as a result of pneumoconiosis (black lung) and/or was pneumoconiosis a substantial contributing cause and/or factor leading to his death?" Director's Exhibit 24. Drs. Morse and Peacock did not elaborate on their "Yes" responses.

In crediting the opinions of Drs. Morse and Peacock, the administrative law judge did not make the determination required by *Williams*. The administrative law judge found that the miner was suffering from pneumoconiosis at the time of his death, as confirmed by autopsy, and that at the time of his death, the miner's lungs failed. Decision and Order at 27. Consequently, the administrative law judge found that pneumoconiosis hastened the miner's death. *Id.* The administrative law judge, however, did not adequately explain how the opinions of Drs. Morse and Peacock support such a determination, in light of the fact that these opinions merely affirmed without explanation that pneumoconiosis contributed to the miner's death. Review of the administrative law judge's Decision and Order reflects that he previously found the same responses inadequately documented and reasoned to support a finding that the miner's death was due to pneumoconiosis at Section 718.205(c)(1). Decision and Order at 22, 23; *see* Director's Exhibit 25. Because the administrative law judge did not apply the *Williams* standard in determining whether pneumoconiosis hastened the miner's death, we must vacate his finding that pneumoconiosis was a substantially contributing cause of the miner's death and remand the case to him to reconsider the relevant medical evidence and provide an adequate explanation of his conclusions. *Williams*, 338 F.3d at 517-18, 22 BLR at 2-655; *see also Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Tenney v. Badger Coal Co.*, 7 BLR 1-589 (1984).

In addition, the administrative law judge erred in finding the opinions of Drs. Morse and Peacock entitled to greater probative weight because he found that the contrary opinions of Drs. Fino and Naeye were not well reasoned and thus accorded them diminished weight. Decision and Order at 27. Contrary to the administrative law judge's analysis, claimant retains the burden of establishing each element of entitlement under Part 718, regardless of the weight accorded the contrary evidence of record. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). Consequently, on remand the administrative law judge must consider the

probative value of Dr. Morse's and Dr. Peacock's opinions without regard to his findings concerning the contrary opinions of Drs. Fino and Naeye. *Id.*

Likewise, we hold that it was not reasonable for the administrative law judge to accord determinative weight to the opinions of Drs. Morse and Peacock based solely on their status as the miner's treating physicians. The administrative law judge has not provided an adequate explanation for his weighing of these opinions in light of their underlying documentation and the validity of their reasoning in light of such documentation. Rather, he relied on the length of the physicians' treatment of the miner, finding that they developed an extensive and intimate awareness of the miner's pulmonary condition over the years and that this knowledge enhanced the value of their opinions. Decision and Order at 27. However, this analysis is not sufficient. The administrative law judge must assess the credibility of these medical opinions and provide a specific finding as to whether the opinions of Drs. Morse and Peacock are well-reasoned and documented and thus entitled to greater probative weight. *Williams*, 338 F.3d at 512-13; 22 BLR at 2-650.

Additionally, on remand, the administrative law judge must consider the entirety of Dr. Fino's opinion that the miner's death was unrelated to pneumoconiosis and determine whether the opinion is reasoned and documented. As employer contends, the administrative law judge discounted Dr. Fino's opinion because he found that Dr. Fino did not address the presence of legal pneumoconiosis. Review of the administrative law judge's decision, however, reflects that he did not find the existence of legal pneumoconiosis established in this case. Decision and Order at 7-8. Accordingly, the administrative law judge should reconsider Dr. Fino's explanation of why the clinical record does not support a finding that the miner's pneumoconiosis was a substantially contributing cause of his death. Director's Exhibit 26; Employer's Exhibit 2. Finally, although the administrative law judge permissibly accorded less weight to Dr. Naeye's view that the autopsy lung tissue slides were unrepresentative of the miner's mild pneumoconiosis, because Dr. Naeye did not consider the autopsy prosector's gross observations of multiple anthracotic nodules, *see Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983), the administrative law judge should consider the remainder of Dr. Naeye's opinion that the miner's medical records reflect that other specific conditions unrelated to pneumoconiosis caused his respiratory problems and death. Director's Exhibits 15, 33.

Accordingly, the administrative law judge's Decision and Order – Award of Survivor Benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge