BRB No. 06-0712 BLA

ERMA KIRKLING (Widow of DON S. KIRKLING) Claimant-Respondent v. PEABODY COAL COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 06/29/2007 DECISION and ORDER

Appeal of the Decision and Order – Awarding Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson (Johnson, Jones, Snelling, Gilbert & Davis), Chicago, Illinois, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (03-BLA-0290) of Administrative Law Judge Rudolf L. Jansen rendered 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). Claimant filed a survivor's claim for benefits on June 18, 1999.[1] Director's Exhibit 2. In his Decision and Order issued on June 6,

[1] The miner was awarded benefits pursuant to a living miner's claim filed on October 1, 1990. Director's Exhibit 1. Following the miner's death on January 17, 1999,

2006, the administrative law judge determined that the x-ray evidence failed to prove that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge found, however, that the autopsy, pathology, and medical opinion evidence were sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2),(4). The administrative law judge further credited the opinion of Dr. Green that the miner's death was hastened by pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

Employer appeals, challenging the weight the administrative law judge accorded the conflicting medical evidence relevant to whether the miner suffered from pneumoconiosis, and whether his death was due to pneumoconiosis. Claimant responds, asserting that employer has conceded the existence of pneumoconiosis, and therefore, that employer is collaterally estopped from challenging the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2),(4).[2] Claimant urges the Board to affirm the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief. Employer has also filed a reply brief.

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claimant filed her application for survivor's benefits on June 14, 1999. Director's Exhibit 2.

[2] Claimant argued before the administrative law judge that employer was precluded from challenging the existence of pneumoconiosis in her survivor's claim since the existence of the disease had already been established in the living miner's claim. The administrative law judge, however, properly found, in accordance with *Zeigler Coal Co. v. Director, OWCP [Villain]*, 312 F.3d 332, 22 BLR 2-581 (7th Cir. 2002), that there is an autopsy exception to application of the rule of issue preclusion. Decision and Order at 35-36; *see Villian*, 312 F.3d at 334; 22 BLR at 2-586-587. In *Villian*, the United States Court of Appeals for the Seventh Circuit, within whose jurisdiction this claim arises, held that "a grant of survivor's benefits may rest on findings made during the miner's life," unless "highly reliable evidence-which as a practical matter means autopsy results" were available to refute those findings. *Zeigler*, 312 F.3d at 334; 22 BLR at 2-587. In the instant case, because autopsy results had become available, the administrative law judge properly determined that employer was not precluded from challenging that the miner suffered from pneumoconiosis prior to his death. Additionally, although the administrative law judge considered employer's statement in its post-hearing brief, that "at most[,] the findings of very mild and minimal CWP is [sic] present." to be a possible concession on the issue of the existence of pneumoconiosis, since the administrative law judge rendered specific findings under Section 718.202(a)(2),(4), we will consider employer's challenge to those findings.

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.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment, that the miner's death was due to pneumoconiosis, or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(2); s*ee Peabody Coal Co v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992).

In the instant case, the administrative law judge determined that the miner's death was hastened by clinical and legal pneumoconiosis. Employer's challenges those findings.[4] After consideration of the administrative law judge's Decision and Order, the evidence of record, and the briefs that were filed in this appeal, we affirm the administrative law judge's award of benefits as it is supported by substantial evidence.

As noted by the administrative law judge, an autopsy was performed by Dr. Heidingsfelder on January 17, 1999 with the following pathological findings: 1) pulmonary anthracosis, marked; 2) multiple anthracotic-fibrotic lesions with localized emphysema (anthracotic macules); 3) anthracotic chest wall lesions; 4) pleural fibrous adhesions; 5) extensive pleural and subpleural interstitial fibrosis; 6) pulmonary emphysema; 7) adenosaquamos carcinoma of the lung; 8) lymph nodal anthracosis and fibrohilar nodule formation. Director's Exhibit 35. In addition to the autopsy report, there are reports and deposition testimony from six pathologists who reviewed sixteen autopsy slides of the miner's lungs. Decision and Order at 37-38. Drs. Caffrey,

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[3] Because the miner's last coal mine employment occurred in Indiana, this case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 3; Decision and Order at 5 n.3.

[4] The administrative law judge determined that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. 718.202(a)(1). We affirm this finding as it is unchallenged by the parties in this appeal. *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983).

Hutchins, Green, and Oesterling diagnosed that the miner suffered from clinical pneumoconiosis at the time of the miner's death, while Drs. Naeye and Tomashefski opined that there was insufficient pathological evidence to support a diagnosis of clinical pneumoconiosis.[5] Decision and Order at 38.

In weighing the conflicting pathologists' opinions, the administrative law judge gave less weight to the opinions of Drs. Naeye and Tomashefski because he found that "their conclusions [were] completely contrary to the findings of the other very qualified pathologists." Decision and Order at 38. Citing the statutory definition of clinical pneumoconiosis at 20 C.F.R. §718.201, the administrative law judge noted that "both doctors observed findings compatible with a diagnosis of [coal workers' pneumoconiosis]," but since they did not diagnose the disease, he found "their final conclusions concerning the existence of [coal workers' pneumoconiosis] to be inconsistent with their pathological findings." *Id*.

The administrative law judge subsumed his analysis of the existence of legal pneumoconiosis in his consideration of the death causation issue at Section 718.205(c). The record physicians who address the death causation issue[6] are in agreement that the

[5] In an October 20, 1999 report, Dr. Naeye opined that there was a small amount of black pigment in about one-half of the lung sections, severe emphysema and large areas of fibrosis. Director's Exhibit 16. Dr. Naeye found one anthracotic macule and one micronodule within a large mass of fibrous tissue. He found no birefringent crystals and noted that focal emphysema may or may not be associated with black deposits. *Id*. Dr. Naeye concluded that the pathological evidence did not support a diagnosis of clinical coal workers' pneumoconiosis. *Id*. Dr. Tomashefski prepared his report on March 20, 2002 and opined that the miner's lung tissue showed multiple nodules of metatastic carcinoma from the miner's laryngeal neoplasm, moderately severe centrilobular emphysema and/or advanced interstitial fibrosis unrelated to coal dust exposure. Employer's Exhibit 3. Dr. Tomashefski noted black pigment and one coal macule, but he opined that these findings did not substantiate a diagnosis of coal workers' pneumoconiosis. *Id*.

[6] We affirm, as unchallenged on appeal, the findings of the administrative law that the medical reports of Drs. Combs, Pangan, Rephser, Howard, Rosecan and Cook were not probative as to the cause of the miner's death. *Skrack*, 6 BLR at 1-710; Decision and Order at 41; Director's Exhibit 39, 40; Claimant's Exhibits 8, 11, 18, 23. The administrative law judge also permissibly determined that the death certificate listing black lung disease as an immediate cause of death was of little probative value since there was no information in the record as to whether the physician signing the certificate had any personal knowledge of the miner's condition. *See Bill Branch Coal Corp. v.*

miner died as a result of metastic laryngeal carcinoma, emphysema and interstitial pulmonary fibrosis,[7] irrespective of whether or not the miner suffered from clinical pneumoconiosis. Based on their review of the autopsy slides, the physicians diagnosed emphysema and interstitial pulmonary fibrosis, which constitute legal pneumoconiosis under Section 718.201 if those conditions were caused by, or significantly related to, the miner's coal dust exposure.[8] 20 C.F.R. §718.201.

In weighing the conflicting medical opinions as to whether the miner suffered from legal pneumoconiosis, and whether that condition hastened the miner's death, the administrative law judge credited Dr. Green's opinion that the miner's death was hastened by a combination of clinical coal workers' pneumoconiosis, and moderately severe emphysema and interstitial fibrosis; Dr. Green attributed the latter conditions to a combination of smoking and coal dust exposure. Employer asserts that the administrative law judge erred in his consideration of the evidence at 718.205(c). Employer argues that the administrative law judge erred in finding that the opinions of Drs. Caffrey, Oesterling, Tuteur, Renn and Rosenberg were hostile to the Act. Employer's Brief in Support of Petition for Review at 19-23. Employer maintains that these doctors' opinions were discredited by the administrative law judge only because they refused to concede that any miner with a chronic obstructive pulmonary disease, such as emphysema, necessarily has legal pneumoconiosis. Employer's Brief in Support of Petition for Review at 26-27. Employer also contends that the administrative law judge erred in crediting the opinion of Dr. Green, asserting that Dr. Green did not adequately explain the basis for his conclusions. Employer further asserts that the administrative law judge improperly shifted the burden of proof, and that he has not provided valid reasons for his decision to reject the opinions of employer's experts, namely Drs. Caffrey, Katzman, Oesterling, Tomashefski, Hutchens, Tuteur, Renn, and Rosenberg, relevant to the issues of legal

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Sparks, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); Decision and Order at 41; Director's Exhibit 7.

[7] Dr. Caffrey did not diagnose interstitial fibrosis in his November 10, 1999 report, Director's Exhibit 17, but the doctor testified that if that condition were present, it was minimal and due to cancer and emphysema resulting from the miner's smoking habit, Employer's Exhibit 16 at 25-28.

[8] "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).

pneumoconiosis and death causation. We separately address employer's assertions of error with respect to each physician below.[9]

As noted by the administrative law judge, Dr. Caffrey opined that the miner's death was the result of metastic cancer of the larynx. Decision and Order at 43; Employer's Exhibit 16. Although Dr. Caffrey diagnosed simple coal workers' pneumoconiosis, he opined that the disease was too mild to have caused or hastened the miner's death. Employer's Exhibit 16. Dr. Caffrey also diagnosed panlobular and centrilobular emphysema. *Id*. He testified that the miner's emphysema was due to smoking, and not coal dust exposure, based on the "minimal" amount of coal dust and lack of nodule lesions that he observed during his microscopic review of the autopsy slides. Employer's Exhibit 16 at 23-24. Contrary to employer's assertion, the administrative law judge did not reject Dr. Caffrey's opinion on the ground that it was hostile to the Act. Employer' Brief in Support of Petition for Review at 23. Rather, the administrative law judge assigned less weight to Dr. Caffrey's opinion, attributing the miner's emphysema solely to smoking, because it was not well-explained in light of the doctor's pathological findings. As noted by the administrative law judge, Dr. Caffrey testified that the miner's emphysema was solely due to smoking in view of what he characterized as a "minimal" amount of coal dust in the miner's lungs. Employer's Exhibit 16. Comparing Dr. Caffrey's deposition testimony to the pathological findings

[9] The administrative law judge determined that the opinion of Dr. Heidingsfelder, the autopsy prosector, was entitled to little probative weight because the administrative law judge was unable to discern whether the doctor had considered an accurate smoking and work history. Decision and Order at 42. The administrative law judge similarly found that Dr. Lenyo's failure to discuss the miner's extensive smoking history detracted from the probative value of his opinion. Decision and Order at 46. The administrative law judge also considered Dr. Cohen's opinion, that the miner's death was hastened by pneumoconiosis, and found it to be insufficiently reasoned. We affirm the administrative law judge's finding with respect to Dr. Lenyo as that finding is unchallenged by the parties in this appeal. *Skrack*, 6 BLR at 1-710. Claimant contends that the administrative law judge erred in failing to credit the opinions of Drs. Heidingsfelder and Cohen as supportive of a finding that the miner's death was hastened by pneumoconiosis. Claimant notes that the administrative law judge's errors with regard to Drs. Heidingsfelder and Cohen may be considered harmless in the event the Board affirms the award of benefits. However, claimant wishes to preserve her objection to these rulings in the event that the Board vacates the award of benefits. We decline to address claimant's assignments of error to the administrative law judge's weighing of the opinions of Drs. Heidingsfelder and Cohen, as any errors committed by the administrative law judge, are harmless in view of our decision to affirm the award of benefits in this case. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

listed in his written report, Director's Exhibit 17, the administrative law judge permissibly found that Dr. Caffrey failed to adequately explain his diagnosis in view of the pathological notation in his report that the miner had "moderate" amounts of anthracotic pigmentation in the hilar lymph nodes. Decision and Order at 43-44; Director's Exhibit 17. Because the administrative law judge permissibly found that portions of Dr. Caffrey's testimony contradicted the doctor's pathological findings, *see Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986), the administrative law judge had discretion to assign less probative weight to Dr. Caffrey's opinion as to whether the miner's death was hastened by emphysema due, in part, to coal dust exposure under Section 718.205(c).

In addition, employer's assertion that the administrative law judge improperly rejected the opinions of Drs. Oesterling, Tuteur, Renn and Rosenberg on the ground that their opinions were hostile to the Act is without merit. With respect to Dr. Oesterling, the administrative law judge properly found that Dr. Oesterling's opinion was conclusory, and that Dr. Oesterling failed to adequately explain the basis for his statement that the "level of change in tissue from emphysema and interstitial fibrosis, that resulted in respiratory impairment during the miner's lifetime, could not be due to coal mine employment," Employer's Exhibit 1.[10] Decision and Order at 44; s*ee Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), ff'd, 86a5 F.2d 916 (7th Cir. 1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*). This was not a finding that Dr. Oesterling's opinion was hostile to the Act.

After evaluating Dr. Tuteur's opinion, that the miner's emphysema (chronic obstructive pulmonary disease) was unrelated to coal dust exposure, the administrative law judge assigned Dr. Tuteur's opinion less probative weight. Decision and Order at 47; Employer's Exhibit 21. As the administrative law judge observed, Dr. Tuteur ruled out coal mine employment as the cause of the miner's chronic obstructive pulmonary disease because the doctor relied upon scientific evidence showing that non-smoking miners were extraordinarily less likely than smoking miners to develop chronic obstructive pulmonary disease. Decision and Order at 46-47; Employer's Exhibit 21 at 42-49. The administrative law judge correctly found that the science supporting the doctor's opinion conflicted with the science credited by the Department of Labor in promulgating the revised regulations. Decision and Order at 47. The administrative law judge cited the Department of Labor's reference to a study showing that smoking and non-smoking miners were equally at risk for developing both moderate and severe obstructions.

[10] Dr. Oesterling noted that simple coal workers' pneumoconiosis has little effect on lung function. Employer's Exhibit 1. He opined that moderately severe emphysema accounted for the miner's respiratory symptoms during his lifetime, and was directly attributed to the miner's smoking history. *Id.*

Decision and Order at 47, citing 65 Fed Reg. 79,920, 79,939 (Dec. 20, 2000). Because the doctor's opinion was premised on scientific evidence conflicting with the science credited by the Department of Labor, the administrative law judge properly gave it less weight. *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483 n.7; 22 BLR 2-265, 2-281 n.7 (7th Cir. 2001) (It was proper to discount a doctor's opinion based on medical science which the Department of Labor has determined not to be "in accord with the prevailing view of the medical community or the substantial weight of the medical and scientific literature." 65 Fed Reg. 79,920, 79,939 (Dec. 20, 2000)).

Similarly, the administrative law judge permissibly assigned less weight to the opinions of Drs. Rosenberg and Renn. Employer's Exhibits 7, 12, 14, 15, 20. The administrative law judge correctly noted that both Drs. Rosenberg and Renn diagnosed extensive emphysema, ranging from centrilobular to panlobular and bullous emphysema, which they opined was unrelated to coal dust exposure and due entirely to smoking. Both physicians explained that the miner's emphysema was not due to coal dust exposure because it was not focal emphysema, the type typically associated with coal workers' pneumoconiosis. Decision and Order at 47-48.

The administrative law judge, however, permissibly questioned whether either Dr. Renn or Dr. Rosenberg had a full understanding of the definition of legal pneumoconiosis under the revised regulations. *See* 20 C.F.R. §718.201. In this regard, the administrative law judge noted Dr. Rosenberg's testimony that "[one] doesn't see the central lobular (sic) emphysema or pan lobular (sic) emphysema … without the medical form of CWP, we're not talking about a legal form of CWP." Employer's Exhibit 20 at 25; Decision and Order at 47.

The administrative law judge permissibly interpreted Dr. Rosenberg's testimony to be that "coal-dust related emphysema, legal emphysema, does not occur in the absence of clinical pneumoconiosis," and he considered that testimony to be divergent from the prevailing view of the medical community and scientific literature relied upon by the Department of Labor in promulgating the revised regulations. Decision and Order at 48, citing 65 Fed. Reg. at 79939; *see Summers*, 272 F.3d at 483 n.7; 22 BLR at 2-281 n.7. Moreover, the administrative law judge quoted the Department of Labor rulemaking comments that: "most evidence to date indicates that exposure to coal mine dust can cause chronic airflow limitation in life and emphysema at autopsy, and this may occur independently of [clinical pneumoconiosis] CWP." Decision and Order at 48 (quoting 65 Fed. Reg. at 799939).

We reject employer's assertion that the administrative law judge erred in evaluating the expert opinions in conjunction with the Department of Labor's discussion of sound medical science in the preamble to the revised regulations. The preamble sets forth how the Department of Labor has chosen to resolve questions of scientific fact. *See*

Midland Coal Co. v. Director, OWCP [*Shores*], 358 F.3d 486, 490, 23 BLR 2-18, 2-26 (7th Cir. 2004). A determination of whether a medical opinion is supported by accepted scientific evidence, as determined by Department of Labor, is a valid criterion in deciding whether to credit the opinion. This is different from finding an opinion hostile to the Act. *See Zeigler Coal Co. v. OWCP* [*Griskell*], --- F.3d ---, 2007 WL 1745888 (7th Cir. June 19, 2007); *Summers*, 272 F.3d at 483 n.7, 22 BLR at 2-281 n.7. Because the administrative law judge determined that the opinions of Drs. Tuteur, Rosenberg and Renn were predicated on medical science at odds with that credited by the Department of Labor, the administrative law judge permissibly determined that their opinions were entitled to less weight on the issue of whether the miner's death was hastened by legal pneumoconiosis. *See Roberts & Schaefer Co. v. Director, OWCP [Williams]*, 400 F.3d 992, 23 BLR 2-302 (7th Cir. 2005).

Employer further contends that it was irrational for the administrative law judge to reject Dr. Katzman's opinion relevant to the cause of the miner's death. We disagree. The administrative law judge properly noted that Dr. Katzman initially reported on November 19, 1989 that the miner's death was due to restrictive lung disease and coal workers' pneumoconiosis, but six months later changed his opinion in a report dated May 11, 2000, which stated that the miner's death was unrelated to coal dust exposure. Decision and Order at 42; Director's Exhibits 18, 28. Although Dr. Katzman's second opinion noted his review of Dr. Hutchins's report, Director's Exhibit 26, the administrative law judge permissibly found that Dr. Katzman did not explain the specific aspects of Dr. Hutchins's report which persuaded him to change his mind about the cause of the miner's death. *Id*. Since the administrative law judge was unable to discern the basis for Dr. Katzman's new opinion, he permissibly assigned less probative weight to the doctor's opinion on the issue of death causation under Section 718.205(c). *See Clark*, 12 BLR at 1-149; Decision and Order at 42.

Lastly, we reject employer's contention that the administrative law judge impermissibly shifted the burden to employer to rule out pneumoconiosis as a factor that hastened the miner's death. Employer's Brief in Support of Petition for Review at 24. In weighing the opinions of Drs. Tomashefski and Hutchins, the administrative law judge noted that these physicians opined that coal dust exposure had not hastened the miner's death, that the miner's emphysema was due solely to smoking, and that the miner's interstitial fibrosis was of an unknown origin. Decision and Order at 44-45; Director's Exhibit 26; Employer's Exhibits 3, 11. Because the administrative law judge permissibly determined that Drs. Tomashefski and Hutchins failed to explain the basis for their conclusion that coal dust exposure was not a contributing factor to the miner's severe emphysema, a condition which the doctors agreed had hastened the miner's death, the administrative law judge permissibly assigned their opinions less probative weight. *See Clark*, 12 BLR at 1-149; Decision and Order at 44-45. On appeal, employer does not suggest that the administrative law judge overlooked evidence of the doctor's

explanations for their opinions that the miner's emphysema was due solely to smoking. Thus, the record supports the administrative law judge's findings that these opinions were unexplained.[11] Such a determination was permissible and within the discretion of the trier-of-fact. *See generally Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997) (administrative law judge need not accept opinion or theory of any given medical expert, but may weigh medical evidence and draw his/her own conclusions).

Fundamentally, this case turns on whether substantial evidence supports the administrative law judge's findings regarding the credibility of the expert witnesses. The administrative law judge observed that Dr. Green was a highly qualified pathologist who provided a well-documented and well-reasoned opinion that the miner's death was due to a number of respiratory conditions, including emphysema caused by coal dust exposure. Decision and Order at 49. The administrative law judge has provided credible reasons for assigning Dr. Green's opinion controlling weight on the issue of death causation, in comparison to the contrary opinions of employer's experts. Decision and Order at 49. The administrative law judge therefore has satisfied his obligation to weigh the conflicting evidence and explain the bases and reasons for all of his findings of fact. *See* 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 U.S.C. §932(a); *Lafferty v. Cannelton Industries*, Inc., 12 BLR 1-190 (1989). We are not empowered to reweigh the evidence or substitute our inferences for those of the administrative law judge. *See Peabody Coal Co. v. Vigna*, 22 F.3d 1388, 18 BLR 2-215 (7th Cir. 1994); *Peabody Coal Co. v. Benefits Review Board*, 560 F.2d 797, 1 BLR 2-133 (7th Cir. 1977); *Fagg*, 12 BLR at 1-77; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

Because the administrative law judge properly exercised his discretion in weighing the conflicting medical opinions and he provided permissible reasons for assigning less probative weight to employer's experts under Section 718.205(c), s*ee Peabody Coal Co. v. Hale*, 771 F.2d 246, 8 BLR 2-34 (7th Cir. 1985); *Hall v. Director, OWCP*, 12 BLR 1-80 (1988), we affirm the administrative law judge's finding that the miner had legal pneumoconiosis[12] and that his death was hastened by pneumoconiosis pursuant to 20

[11] The administrative law judge specifically noted that Dr. Tomashefski provided a detailed explanation as to why the miner's interstitial fibrosis was unrelated to coal dust exposure, but that the doctor did not provide such an analysis for his conclusion that the miner's emphysema was unrelated to coal dust exposure. Decision and Order at 45; Employer's Exhibit 11 at 15-17.

[12] Employer asserts that the administrative law judge failed to properly explain why he rejected the opinions of Drs. Naeye and Tomashefski that the miner did not suffer from clinical pneumoconiosis. Insofar as we affirm the administrative law judge's finding that the miner suffered from legal pneumoconiosis, we consider any error

C.F.R. §718.205(c). *Railey*, 972 F.2d at 178, 16 BLR at 2-121. Since the administrative law judge permissibly relied on the reasoned and documented opinion of Dr. Green in finding that claimant satisfied her burden of proof to establish that the miner suffered from legal pneumoconiosis pursuant to Section 718.202(a), and that his death was hastened by pneumoconiosis pursuant to Section 718.205(c), we affirm, as supported by substantial evidence, the administrative law judge's award of benefits.

Accordingly, the Decision and Order – Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

committed by the administrative law judge in determining the weight to be accorded the conflicting evidence regarding the existence of clinical pneumoconiosis, was harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).