BRB No. 04-0509 BLA

JEFFREY S. BOGGS (Surviving Child of DONALD LEE BOGGS) Claimant-Respondent v. LAUREL CREEK MINING COMPANY and WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSISCONIOSIS FUND Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: _____ DECISION and ORDER

Appeal of the Decision and Order of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Robert Weinberger (Employment Programs Litigation Unit), Charleston, West Virginia, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

DOLDER, Chief Administrative Appeals Judge:

Employer/carrier (hereinafter, carrier) appeals the Decision and Order (03-BLA-5462) of Administrative Law Judge Michael P. Lesniak 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). The administrative law judge credited the miner with at least twenty-one years of coal mine employment and adjudicated this survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718.[1] The administrative law judge found the evidence sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2). Accordingly, the administrative law judge awarded benefits.

On appeal, carrier challenges the administrative law judge's finding that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)(2). Claimant[2] responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[3]

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).

Benefits are payable on a survivor's claim filed on or after January 1, 1982 only when the miner's death was due to pneumoconiosis.[4] *See* 20 C.F.R. §§718.1, 718.205(c); *Neeley v.*

---

[1]Carrier conceded the existence of pneumoconiosis arising out of coal mine employment. Transcript at 10.

[2]Claimant is the surviving, dependent child of the miner, Donald Lee Boggs. The miner filed his first claim with the Social Security Administration (SSA) in May, 1973. Director's Exhibit 1. After several administrative denials by the SSA, the Department of Labor (DOL) finally denied the claim. *Id*. The miner filed a second claim with the DOL in May, 1992. Director's Exhibit 2. This claim was denied by the DOL on October 30, 1992. *Id*. The miner filed his third claim with the DOL in April, 1995. Director's Exhibit 3. This claim was denied by the DOL on October 5, 1995. *Id*. The miner died on January 30, 2001. Director's Exhibits 4, 11. Claimant filed a survivor's claim in March, 2001. Director's Exhibit 4.

[3]Since the administrative law judge's length of coal mine employment finding is not challenged on appeal, we affirm this finding. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[4]Section 718.205(c) provides, in pertinent part, that death will be considered to be due

Director, OWCP, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The pertinent regulation provides that pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. *See* 20 C.F.R. §718.205(c)(5). Consistent with 20 C.F.R. §718.205(c), the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has also adopted the standard whereby pneumoconiosis will be considered a substantially contributing cause of the miner's death if it actually hastened the miner's death. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993); *see also* 20 C.F.R. §718.205(c)(2), (c)(5).

Carrier contends that the administrative law judge erred in finding the evidence sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)(2).[5] The administrative law judge considered the death certificate signed by Dr. Veloso, the autopsy report by Dr. Racadag, and the medical reports by Drs. Crouch and Green. In the death certificate, Dr. Veloso listed the immediate cause of the miner's death as cardio-pulmonary arrest/failure due to massive acute myocardial infarction, hypertension, and HCVD. Director's Exhibit 11. In the autopsy report, Dr. Racadag rendered a pathological diagnosis of simple coal workers' pneumoconiosis with macular lesions, pulmonary congestion and edema and opined that "[t]he above conditions probably contributed to the patient's morbidity." Director's Exhibit 12.

---

to pneumoconiosis if any of the following criteria is met:

> (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
> (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
> (3) Where the presumption set forth at §718.304 is applicable.
> ...
> (5) 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).

[5]Because there is no medical evidence that pneumoconiosis was the direct cause of the miner's death, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)(1). Further, because there is no evidence of complicated pneumoconiosis, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)(3).

With regard to the medical reports, Dr. Crouch diagnosed very mild simple coal workers' pneumoconiosis and opined that pneumoconiosis did not cause, contribute to, or hasten the miner's death. Employer's Exhibit 1. In contrast, Dr. Green diagnosed coal workers' pneumoconiosis and opined that pneumoconiosis contributed to the miner's death, assuming that the miner suffered from an acute cardiac event that led to his death. Claimant's Exhibit 1. After considering the conflicting medical evidence, the administrative law judge stated, "I find [that] the opinion of Dr. Green outweighs the contrary medical opinion evidence of record." Decision and Order at 8.

The administrative law judge permissibly discredited the death certificate because it is not reasoned.[6] *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Dr. Veloso did not provide an explanation for his conclusions in the death certificate. Director's Exhibit 11. Further, the administrative law judge stated that "Dr. Veloso did not provide any post-mortem report to further explain his conclusions contained within the death certificate." Decision and Order at 7. The administrative law judge also permissibly discredited Dr. Racadag's opinion because it is equivocal. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). As previously noted, Dr. Racadag opined that "[t]he above conditions [coal workers' pneumoconiosis, pulmonary congestion and edema] *probably* contributed to the patient's morbidity." Director's Exhibit 12 (emphasis added).

Carrier initially asserts that the administrative law judge erred in according greater weight to Dr. Green's opinion than to the contrary opinion of Dr. Crouch. Carrier specifically asserts that "[t]he probative weight given to Dr. Green's opinion should have been diminished in light of the [administrative law judge's] decision to accord less weight to the autopsy prosector's [Dr. Racadag's] findings." Carrier's Brief at 4. The administrative law judge determined that Dr. Green's opinion is supported by more extensive documentation than Dr. Crouch's opinion. In considering the opinions of Drs. Crouch and Green, the administrative law judge stated:

> Dr. Crouch reviewed *only* the autopsy slides, autopsy report, and death certificate. Dr. Green reviewed, in addition to the foregoing evidence, various medical records pertaining to the miner's health condition during his lifetime. Of significance, Dr. Green noted a history of COPD with daily cough and

[6]Since the administrative law judge permissibly discredited the death certificate because it is not reasoned, we hold that any error by the administrative law judge in discrediting the death certificate based on Dr. Veloso's qualifications or personal knowledge of the miner is harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

phlegm.

Decision and Order at 7-8 (emphasis added). In the July 9, 2003 report, Dr. Green stated that his findings are based on an autopsy report, autopsy slides, a death certificate and assorted medical records.[7] Claimant's Exhibit 1. However, in addressing the issue of whether the miner suffers from pneumoconiosis, Dr. Green specifically stated, "I will base my analysis on review of the autopsy report and tissues." *Id*. Moreover, Dr. Green did not indicate that he relied on the death certificate or the medical records in addressing the issue of whether pneumoconiosis contributed to the miner's death. *Id*. Since Dr. Green's opinion is based on autopsy slides, in addition to the autopsy report, we reject carrier's assertion that the administrative law judge erred in failing to discount Dr. Green's opinion because it is based on a discredited autopsy report. The administrative law judge found that Dr. Green's opinion is supported by more extensive documentation than Dr. Crouch's opinion. However, Drs. Crouch and Green both based their opinions on autopsy slides and the autopsy report. The Administrative Procedure Act (APA), 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), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *see also Hall v. Director, OWCP*, 12 BLR 1-80 (1988); *Shaneyfelt v. Jones & Laughlin Steel Corp.*, 4 BLR 1-144 (1981). In view of the aforementioned, we hold that the administrative law judge erred in failing to explain why he found that Dr. Green's opinion is supported by more extensive documentation than Dr. Crouch's opinion. *Wojtowicz*, 12 BLR at 1-165.

Carrier additionally asserts that Dr. Green's opinion does not satisfy claimant's burden of establishing that pneumoconiosis hastened the miner's death at 20 C.F.R. §718.205(c)(2). Carrier specifically argues that "Dr. Green's opinion supports a finding, at best, that pneumoconiosis was a marginal cause of [the miner's] death." Carrier's Brief at 4. In his July 9, 2003 report, Dr. Green specifically stated:

> The pneumoconiosis, which included simple macular coal worker's pneumoconiosis and chronic bronchitis due to the irritative effects of dust was not sufficient in my view to have directly caused Mr. Boggs' death. It is also difficult to determine whether the pneumoconiosis was a contributing factor to his death in view of the fact that the cause of death is not known. Mr. Boggs

[7]Dr. Green specifically identified the medical records he reviewed by noting, "[a]ssorted medical records including from Dison Health Care Inc., Joby Joseph, M.D. of Logan General Hospital, Medical Office Building, Boone Memorial Hospital, Orthopedic records of Dr. R. Padmanaban, M.D., orthopedic surgeon at Logan General Hospital and others." Claimant's Exhibit 1.

> did have several risk factors for ischemic heart disease, including hypertension, hyperlipidemia and moderate obesity. It therefore is likely that Mr. Boggs suffered an acute cardiac event leading to death. Assuming this to be the case, the presence of co-existent lung disease at the time of the cardiac event would have contributed, in a small way, to his death. The mechanism of this would be through hypoxemia, which would compromise the ability of the heart to survive an acute ischemic event.

Claimant's Exhibit 1. While Dr. Green's opinion that pneumoconiosis contributed to the miner's death "in a small way" may satisfy the requirement that pneumoconiosis hastened the miner's death at 20 C.F.R. §718.205(c)(2) and (5), it is contingent on the fact that the miner suffered from an acute cardiac event that led to his death. *Shuff*, 967 F.2d at 980, 16 BLR at 2-93, 2-94.

In addressing an acute cardiac event as a cause of the miner's death, the administrative law judge stated:

> Although Dr. Green expressed some concern regarding the lack of evidence to establish a definitive cause of death in this case, his opinion is nonetheless well-reasoned. I find that Dr. Green's opinion was consistent with the miner's occupational history, smoking history, medical history, and the autopsy findings. He reasoned that [the miner] suffered an acute cardiac event leading to death.

Decision and Order at 8. Contrary to the administrative law judge's finding, Dr. Green did not render a definitive opinion that the miner suffered from an acute cardiac event that led to his death. Rather, Dr. Green indicated that he could not opine that this condition caused the miner's death. Claimant's Exhibit 1. Dr. Green specifically stated:

> Unfortunately, the autopsy was limited to examination of the lungs. The heart was not examined. Thus, it is not possible to definitely determine whether [the miner] had an acute myocardial infarction or even to determine definitely the cause of death.

Id. Consequently, Dr. Green merely opined that "[i]t therefore is *likely* that [the miner] suffered an acute cardiac event leading to death." *Id*. (emphasis added).

As previously noted, the administrative law judge permissibly discredited the death certificate, which listed cardio-pulmonary arrest/failure due to massive acute myocardial infarction as an immediate cause of the miner's death. *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-21-22; *Fuller*, 6 BLR at 1-1294. In the autopsy report, Dr. Racadag diagnosed

pulmonary congestion and edema and she opined that "[t]he clinical impression is that [the miner] *probably* suffered from acute myocardial infarction." Director's Exhibit 12 (emphasis added). However, the administrative law judge did not credit Dr. Racadag's opinion with regard to whether the miner suffered from an acute myocardial infarction. Thus, since the administrative law judge did not explain why he found the evidence sufficient to establish that the miner's death was caused by an acute cardiac event, the administrative law judge has not provided sufficient findings to support his reliance on Dr. Green's opinion to establish that pneumoconiosis hastened the miner's death. We therefore vacate the administrative law judge's finding that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)(2) and remand the case for further consideration of the evidence. On remand, the administrative law judge is instructed to consider the evidence in accordance with the requirements of the APA.

Furthermore, in the interest of judicial economy, we will additionally address carrier's assertions that the administrative law judge erred in discounting Dr. Crouch's opinion. Carrier asserts that the administrative law judge erred in discounting Dr. Crouch's opinion because it is hostile to the Act. In a July 29, 2003 medical report, Dr. Crouch specifically stated:

> The lungs show rare, small coal dust macules that are minimally sufficient for a diagnosis of simple coal workers' pneumoconiosis. Given these minimal changes, occupational dust inhalation could not have caused any clinically significant degree of functional impairment or disability and could not have caused, contributed to, or otherwise hastened this patient's death secondary to complications of atherosclerotic cardiovascular disease.

Employer's Exhibit 1. In finding that Dr. Crouch's opinion is hostile to the Act, the administrative law judge focused on Dr. Crouch's diagnosis of simple coal workers' pneumoconiosis and his conclusion that the miner's occupational dust inhalation could not have caused any clinically significant degree of functional impairment or disability. Decision and Order at 8. The administrative law judge stated that "[s]tatements by physicians that simple pneumoconiosis cannot be totally disabling have been found to be hostile to the Act." *Id*. The administrative law judge also stated that "Dr. Crouch's definitive statement essentially eliminated the possibility of alternatives." *Id*.

In *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997), the Fourth Circuit considered whether Dr. Zaldivar's opinion was hostile to the Act. Dr. Zaldivar opined that early simple coal workers' pneumoconiosis would "not be expected" to cause pulmonary impairment. The court noted that in *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 18 BLR 2-16 (4th Cir. 1993), it rejected the opinion of a physician who stated that pneumoconiosis does not "as a rule" cause total disability because that opinion was based on

a premise "antithetical" to the Act. *Lane*, 105 F.3d at 173, 21 BLR at 2-46. However, the court in *Lane* reasoned that, unlike the physician's opinion in *Thorn*, "Dr. Zaldivar's analysis demonstrates that he based his opinion on the evidence in the instant case and not upon any 'hostile' assumptions." *Id*. The court also reasoned that Dr. Zaldivar considered the possibility that claimant's simple pneumoconiosis caused a totally disabling respiratory impairment. *Id*. Further, the Board has held that a medical opinion can be rejected as hostile to the Act only if it forecloses any possibility that simple pneumoconiosis can be disabling. *Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988).

In the instant case, Dr. Crouch did not find that simple pneumoconiosis cannot be totally disabling. Rather, based on the small coal dust macules found in the miner's lungs in this particular case, Dr. Crouch merely opined that coal dust inhalation could not cause a functional impairment or disability and could not cause, contribute to, or hasten the miner's death. Thus, since Dr. Crouch's opinion is based on the evidence in the record and since he did not foreclose the possibility that simple pneumoconiosis can be disabling, we hold that the administrative law judge erred in discounting Dr. Crouch's opinion on the ground that it is hostile to the Act. *Lane*, 105 F.3d at 173, 21 BLR at 2-46; *Searls*, 11 BLR 1-164; *see also Aimone v. Morrison Knudson Co.*, 8 BLR 1-32 (1985) (medical opinion in conflict with the Act is invalid only with respect to issues involving cause of disability).

Carrier additionally asserts that the administrative law judge erred in discounting Dr. Crouch's opinion because it is inconsistent with the evidence of record. In finding Dr. Crouch's opinion inconsistent with the medical evidence of record, the administrative law judge indicated that Dr. Crouch's opinion is based on an inaccurate smoking history. The administrative law judge specifically stated:

> Lastly, I find that the findings of Dr. Crouch are inconsistent with the evidence of record. Dr. Crouch noted the presence of "more abundant rounded black particles most consistent with carbonaceous combustion products derived from cigarette smoke." Based on this statement it appears Dr. Crouch assumed the miner had a history of cigarette smoking. However, the miner's ex-wife testified at the hearing that the miner never smoked cigarettes and only smoked cigars for approximately one year. Perhaps if Dr. Crouch had been aware of the miner's smoking history he would have attributed the presence of the particles to coal mine dust exposure and perhaps that would have changed his opinion regarding the severity of the pneumoconiosis. For this reason, I also accord less weight to the opinion of Dr. Crouch.

Decision and Order at 8.

During the August 26, 2003 hearing, the miner's ex-wife testified that the miner never

smoked cigarettes and only smoked three to four cigars per day for one year.[8] Transcript at 16. As found by the administrative law judge, there is no evidence of record that the miner smoked cigarettes. However, although Dr. Ataii, in a report dated April 3, 1980, noted a smoking history of three to four cigars per day for one year, Director's Exhibit 1, Dr. Carrillo, in a report dated May 26, 1992, noted a smoking history of five cigars per day for thirty years, Director's Exhibit 2. Similarly, in a report dated May 12, 1995, Dr. Ranavaya noted a smoking history of two cigars per day for thirty years. Director's Exhibit 3. As previously noted, the APA requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz*, 12 BLR at 1-165. Since the administrative law judge did not address the conflicting smoking histories noted by the physicians, we hold that the administrative law judge erred in failing to explain why he found the miner's ex-wife's testimony about the miner's smoking history more credible than the smoking histories noted by Drs. Carrillo and Ranavaya. *Wojtowicz*, 12 BLR 1-165. On remand, the administrative law judge is instructed to reassess Dr. Crouch's opinion, *inter alia*, in light of his finding regarding the miner's smoking history.

---

[8]The miner's ex-wife's testimony with respect to the miner's smoking history is as follows:

> Q Do you know very much about his smoking history? Did he smoke cigarettes or anything at the time of his death?
>
> A No.
>
> Q Now, according to one of the doctors who examined your husband when he was still alive - -
>
> A He smoked cigars.
>
> Q Your husband told them that he smoked three to four cigars a day for about one year and that he'd stopped doing that in 1976. Does that sound correct to you?
>
> A Yeah, (Positive response). That sounds about right.
>
> Q So he was not a cigarette smoker then?
>
> A No. He never smoked cigarettes.

Transcript at 16.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

I concur.

_____
ROY P. SMITH
Administrative Appeals Judge

McGRANERY, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's determination to vacate the administrative law judge's decision awarding survivor's benefits to the disabled child of a deceased miner with a history of twenty-one years of coal mine employment. I would affirm the award of benefits. The majority remands the case for the administrative law judge to further explain his decision to give greater weight to the opinion of Dr. Green that the contribution of the miner's clinical and legal pneumoconiosis hastened his death, than to the opinion of Dr. Crouch, that the miner's clinical pneumoconiosis did not contribute to his death. The majority's decision is based both on arguments raised by employer and on arguments raised entirely by the majority; none of which, I believe, has merit.

The majority correctly rejects employer's argument that Dr. Green's opinion is insufficient to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c)(2) because it "supports a finding, at best, that pneumoconiosis was a marginal cause of [the miner's] death." Brief for Employer at 4. As the Fourth Circuit explained in *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 979, 16 BLR 2-90, 2-92 (4th Cir. 1992), the regulatory standard is satisfied if

pneumoconiosis "serves to hasten death in any way."

Although the majority appears to recognize that one of employer's arguments lacks merit, the majority relies on a web of mischaracterizations of the record to determine that the administrative law judge's decision to credit Dr. Green's opinion requires further explanation.

The majority addresses an argument which employer did not raise and in no way suggested: that Dr. Green's opinion is insufficient to establish hastening because it rests on a finding that the miner suffered an acute cardiac event. The majority argues that because the "administrative law judge did not credit Dr. Racadag's opinion with regard to whether the miner suffered from an acute myocardial infarction," and Dr. Green's opinion rests on that assumption, the case must be remanded for the administrative law judge to explain his reliance on Dr. Green's opinion. Board Decision and Order at 7. The majority's statement regarding the administrative law judge's consideration of Dr. Racadag's opinion is misleading insofar as it suggests the administrative law judge questioned the doctor's statement: "The clinical impression [in the hospital emergency room] is that [the miner] suffered from acute myocardial infarction." Director's Exhibit 12 at 1. Neither below nor on appeal has employer questioned the truth of that statement, nor did the administrative law judge. He was concerned about the only statement in the report which is at issue in this case: that simple coal workers' pneumoconiosis with macular lesions, pulmonary congestion and edema "probably contributed to the patient's morbidity" *Id*. The administrative law judge expressly stated that that part of the opinion he did not credit because it was equivocal and lacked a rationale. Decision and Order at 7. The administrative law judge observed: "although Dr. Green expressed some concern regarding the lack of evidence to establish a definitive cause of death in this case, his opinion is nonetheless well-reasoned." *Id*. at 8. The administrative law judge's review of Dr. Green's opinion revealed that Dr. Green had "reasoned that [the miner] suffered an acute cardiac event leading to death." In addition to the autopsy report, Dr. Green considered the miner's medical history, that he had "several risk factors for ischemic heart disease," and the records of his treatment by emergency medical services and of the hospital where the miner died. Hence, the doctor was able to conclude: "it therefore is likely [the miner] suffered an acute cardiac event leading to death." Claimant's Exhibit 1 at 3. Dr. Green fully explained the basis for his opinion that the miner died of a heart attack and the administrative law judge reasonably credited that opinion.

The majority states that because "Dr. Green merely opined that '[i]t therefore is *likely* that [the miner] suffered an acute cardiac event leading to death.' *Id*. (emphasis added)," Board Decision and Order at 6, and this is the premise of the doctor's opinion that pneumoconiosis hastened death, the administrative law judge must explain why he found the evidence sufficient to establish that the miner's death was caused by an acute cardiac event. An essentially identical argument was rejected by the Fourth Circuit in another case:

> Island Creek argues that Dr. Green's opinion, upon which the ALJ relied, fails to constitute substantial evidence because it is speculative and not supported by objective evidence. We disagree. Dr. Green clearly stated that the exact cause of Mr. Walls' death could not be determined. After discussing the medical and autopsy evidence, however, he concluded that Mr. Walls suffered from chronic obstructive pulmonary disease (COPD) resulting from exposure to coal mine dust; and that the combination of pneumoconiosis, COPD, and pneumonia were sufficient to impair his pulmonary function and hasten his death. Any equivocation in Dr. Green's opinion does not indicate speculation but merely reflects the "uncertainty inherent in medical opinions." *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763 (4th Cir. 1999).

Island Creek Coal Co. v. Walls, 230 F.3d 1352, 2000 WL 1390653 (4th Cir. Sept. 26, 2000).[9]

The majority correctly states that the carrier argues that the administrative law judge should have given reduced weight to Dr. Green's opinion because Dr. Green relied in part on the autopsy findings and the administrative law judge had accorded less weight to the autopsy findings. Brief for Carrier at 4. Both the majority and employer misrepresent the administrative law judge's decision when they indicate the administrative law judge gave less weight to the findings of the prosector, Dr. Racadag. The administrative law judge did not give less weight to Dr. Racadag's findings but to his opinion on the contribution of pneumoconiosis to death. The administrative law judge explained that because the doctor's opinion on the role of pneumoconiosis was equivocal and lacked a rationale he "accord[ed] less weight to the opinion of…Dr. Racadag, *on this issue*." Decision and Order at 7 (emphasis added). Nothing in the administrative law judge's decision suggests that he questioned Dr. Racadag's findings.

From that erroneous contention the majority spins off an entirely new argument, falsely claiming it came from carrier: that the administrative law judge erred in failing to explain why he found Dr. Green's contribution opinion to be based on more extensive documentation than Dr. Crouch's, when it appears that both doctors based their opinions on autopsy slides and the autopsy report. The majority states that Dr. Green, as well as Dr. Crouch, based his causation opinion on the autopsy report and slides because Dr. Green stated that his opinion on the existence of pneumoconiosis was based on the autopsy report and tissues. Claimant's Exhibit 1 at 3. The majority is flatly wrong in asserting that "Dr. Green did not indicate that he relied on the death certificate or the medical records in

[9]Needless to say, this unpublished decision is cited because it is the only decision directly on point. *See* 4th Cir. R. 36(c).

addressing the issue of whether pneumoconiosis contributed to the miner's death." Board Decision and Order at 5. On the contrary, Dr. Green had stated at the beginning of his report that his "findings and opinions, set out below…are based upon a review of the following materials": the autopsy report and slides, death certificate and "[a]ssorted medical records…", including the record of the hospital where the miner died. Claimant's Exhibit 1 at 1-2. Dr. Green was careful to distinguish his opinion on the existence of pneumoconiosis from the rest of his opinion, stating that his opinion on that subject would be based on a review of the autopsy report and tissues. Claimant's Exhibit 1 at 3. Furthermore, a glance at the doctor's response to the question "Did the pneumoconiosis cause or contribute to his death?" reveals that the doctor relied on information which was not contained in the autopsy report and slides: he identified the miner's "risk factors for ischemic heart disease, including hypertension, hyperlipidemia, and moderate obesity." Claimant's Exhibit 1 at 3. Also, knowing the miner's history of "COPD with daily cough and phlegm," Dr. Green recognized that the miner's chronic bronchitis related to coal dust exposure would have contributed to hypoxemia, thereby compromising the heart's ability to survive an attack. Claimant's Exhibit 1 at 3. Because Dr. Green's report confirms his statement that his causation opinion was based on assorted medical records and the death certificate, as well as the autopsy report and slides, abundant evidence supports the administrative law judge's determination that Dr. Green's opinion was based on "more extensive documentation" than Dr. Crouch's.

The administrative law judge correctly determined to give less weight to Dr. Crouch's opinion on the contribution of pneumoconiosis to the miner's death because her information was limited to the death certificate, autopsy report and slides. The administrative law judge observed that in contrast, Dr. Green had considered, in addition to that evidence, "various medical records pertaining to the miner's health during his lifetime. Of significance, Dr. Green noted a history of COPD with daily cough and phlegm." Decision and Order at 8. As a result, Dr. Crouch's opinion was limited to the degree of contribution of the miner's clinical pneumoconiosis to his death. For that reason she concluded:

> Given these minimal changes, occupational dust inhalation could not have caused any clinically significant degree of functional impairment or disability and could not have caused, contributed to, or otherwise hastened this patient's death….

Employer's Exhibit 1 at 2. Because of Dr. Green's more extensive knowledge of the miner's physical condition, he was able to diagnose "pneumoconiosis, which included simple macular coal worker's [sic] pneumoconiosis and chronic bronchitis due to the irritative effects of dust…[and he concluded that this pneumoconiosis] would have contributed, in a small way, to death." Claimant's Exhibit 1at 3. The importance of Dr. Green's knowledge of the miner's legal and clinical pneumoconiosis is revealed in the Comments to the Regulations. They reflect that the Rulemaking Record contains opinions of three doctors

indicating that it would be very unusual for simple pneumoconiosis to contribute to a non-respiratory death, but those doctors, like Dr. Crouch,

> focus on clinical pneumoconiosis as opposed to pneumoconiosis as more broadly defined by the statute; thus, they do not address whether, for instance, chronic obstructive pulmonary disease induced by coal mine dust exposure can, in certain circumstances, contribute to a non-respiratory death…. Dr. Cohen explained how such a cause and effect relationship could occur.

65 Fed. Reg. 79951 (Dec. 20, 2000).

Hence, the administrative law judge's determination to assign less weight to Dr. Crouch's opinion because of her ignorance of the miner's medical records and history of COPD related to coal dust exposure, was entirely reasonable and legally correct. Because the administrative law judge provided a valid reason for discounting Dr. Crouch's opinion, as based on incomplete medical evidence, it is not necessary to address employer's contention that the administrative law judge erred in describing Dr. Crouch's opinion as hostile, or reflecting an inaccurate smoking history.[10] *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 213 n.13, 22 BLR 2-162, 2-178 n.13 (4th Cir. 2000).

---

[10]Dr. Crouch identified particles seen in the miner's lungs as "most consistent with…products derived from cigarette smoke." Employer's Exhibit 1 at 2. The administrative law judge found that this statement indicated Dr. Crouch believed, mistakenly, that the miner had smoked cigarettes. The administrative law judge speculated that Dr. Crouch might have identified those black particles as coal dust related if she had known that the miner had never smoked cigarettes, that he had smoked only cigars and those, for only one year. The majority's determination that the case must be remanded for the administrative law judge to reconsider his finding regarding the miner's smoking history makes no sense. The administrative law judge cited Dr. Crouch's reference to cigarettes as an indication of her lack of real information about the miner, *i.e.*, he had never smoked cigarettes, he had smoked only cigars. The smoking histories which the majority says the administrative law judge needs to discuss are both cigar smoking. They are irrelevant to the administrative law judge's point that Dr. Crouch misidentified particles as related to cigarettes. Furthermore, the majority exceeds its authority in directing the administrative law judge to explain his determination to credit the miner's ex-wife's testimony over statements contained in medical opinions. The administrative law judge's determination was well within his discretion. *Doss v. Director, OWCP*, 53 F.3d 654, 659, 19 BLR 2-181, 2-191 (4th Cir. 1995). Most importantly, the administrative law judge's comment about the miner's smoking history was not the basis for finding Dr. Crouch's opinion was outweighed by Dr. Green's: it was an example of Dr. Crouch's incomplete information about the miner, in contrast to Dr. Green's.

In sum the majority's determination to remand the case at bar for further explanation of his determination to credit the opinion of Dr. Green over that of Dr. Crouch is unsupported by reason or law. The administrative law judge's decision awarding survivor's benefits to the miner's disabled child should be affirmed.

_____

REGINA C. McGRANERY
Administrative Appeals Judge