U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0184 BLA

FRANCES B. FUNKA (Widow of and on behalf of JOHN F. FUNKA)	)	
Claimant-Respondent	)	
v.	)	
CONSOLIDATION COAL COMPANY	)	DATE ISSUED: 03/15/2017
Self-Insured Employer-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Cheryl Catherine Cowen, Waynesburg, Pennsylvania, for claimant.

Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits on Remand (2007-BLA-05920) of Administrative Law Judge Theresa C. Timlin in a miner's claim filed on June 5, 2003, and a survivor's claim filed on August 22, 2006, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] This case is before the Board for the fourth time.[2] Most recently, in consideration of employer's appeal, the Board vacated Administrative Law Judge Ralph A. Romano's award of benefits in both claims, and remanded the case for Judge Romano to determine: whether Dr. Oesterling's report properly constitutes rebuttal autopsy evidence pursuant to 20 C.F.R. §725.414; whether the totality of the evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R §718.202(a)(1)-(4);[3] and, if pneumoconiosis is established, whether the miner was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).[4] *Funka v. Consolidation Coal Co*., BRB No. 12-0208 BLA (Jan. 30, 2013) (unpub.).

On remand, because Judge Romano had retired, the case was reassigned to Administrative Law Judge Theresa C. Timlin (the administrative law judge). In her December 10, 2015 Decision and Order, the administrative law judge found that the weight of the evidence in the miner's claim was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R.

[1] Claimant is the widow of the miner, who died on December 11, 2005. Director's Exhibit 97. In addition to her claim for survivor's benefits, claimant is pursuing the miner's claim on behalf of his estate.

[2] We incorporate the procedural history of the case as set forth in the Board's prior decisions, *Funka v. Consolidation Coal Co.*, BRB No. 06-0134 BLA (Nov. 15, 2006) (unpub.), *F.F.* [*Funka*] *v. Consolidation Coal Co.*, BRB No. 08-0451 BLA (Mar. 26, 2009) (unpub.), and *Funka v. Consolidation Coal Co*., BRB No. 12-0208 BLA (Jan. 30, 2013) (unpub.).

[3] The Section 411(c)(4) rebuttable presumption of total disability due to pneumoconiosis, which applies to claims filed after January 1, 2005, that were pending on or after March 23, 2010, does not apply to the miner's claim, as it was filed prior to January 1, 2005. 30 U.S.C. §921(c)(4) (2012); Director's Exhibit 2.

[4] Based upon a stipulation by the parties, Administrative Law Judge Ralph A. Romano previously found a totally disabling respiratory or pulmonary impairment was established, and the Board affirmed that finding. *See Funka v. Consolidation Coal Co.*, OALJ No. 2007-BLA-05920, slip op. at 7 (Dec. 20, 2011); *Funka*, BRB No. 12-0208 BLA, slip op. at 3 n.3.

§§718.202(a), 718.203(b), and disability causation pursuant to 20 C.F.R. §718.204(c). Accordingly, she awarded benefits in both claims.[5]

In the present appeal, employer contends that the administrative law judge denied employer due process by entering an order on remand requiring the parties to designate their evidence. Employer also challenges the administrative law judge's weighing of the medical evidence in finding the existence of pneumoconiosis and disability causation established at 20 C.F.R. §§718.202(a) and 718.204(c), respectively. Claimant responds, urging affirmance of the awards of benefits. The Director, Office of Workers' Compensation Programs, has not submitted a brief in this appeal.

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.[6] 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).

I. Designation of Evidence

When the miner's claim first went to hearing before Administrative Law Judge Michael P. Lesniak on January 27, 2005, the parties each submitted medical evidence in support of their respective cases.[7] January 27, 2005 Hearing Transcript at 4-8. After the miner died, claimant filed a survivor's claim, and the miner's claim was remanded to the district director to be consolidated with the survivor's claim and for submission of

[5] Section 422(*l*) of the Act provides that the survivor of a miner who was eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2012).

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as the miner was employed in the coal mining industry in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

[7] The miner submitted a July 19, 2004 report from Dr. Rasmussen, and a December 7, 2004 report from Dr. Salari. January 27, 2005 Hearing Transcript at 5-7. Employer submitted a January 26, 2004 report from Dr. Brooks, and a November 15, 2004 report from Dr. Fino. *Id*. at 7-8. In addition, employer submitted the July 26, 2004 deposition of Dr. Wiot. *Id*. Neither party submitted an Evidence Summary Form designating their evidence.

additional evidence. Director's Exhibit 91. The claims were consolidated and reassigned to Judge Romano, who held a hearing on November 14, 2007, at which autopsy reports and additional medical reports were admitted into evidence.[8]

When the case was last before the Board, claimant's counsel asserted that employer had exceeded its evidentiary limitations under 20 C.F.R. §725.414 by submitting three medical opinions. Claimant's May 30, 2012 Brief in Opposition to Consolidation Coal Company's Petition for Review at 4-6. Claimant specifically asserted that Dr. Oesterling's report, submitted as a rebuttal autopsy report, was actually a medical opinion in excess of the evidentiary limitations because Dr. Oesterling reviewed and relied upon medical records in rendering his opinion. *Id*. at 5. The Board remanded the issue for the administrative law judge to determine whether Dr. Oesterling's report properly constitutes rebuttal autopsy evidence, and if not, to fashion an appropriate remedy. *Funka*, BRB No. 12-0208 BLA, slip op. at 4 n.6, 10 (citations omitted). On September 18, 2015, Judge Timlin ordered the parties to submit evidence summary forms, designating evidence in the miner's claim and separately designating evidence in the survivor's claim. September 18, 2015 Order to Show Cause at 6.

Employer asserts on appeal that the administrative law judge erred by ordering the parties to designate their evidence. Employer states:

> Ordering certain evidence stricken or re-designated *sua sponte* and without prior notice at this late a point in the proceedings, after the record has already been submitted and has been continuously reviewed as designated now, improperly denied [employer] its due process right to fully present its case.

Employer's Brief at 19.

[8] Claimant submitted a December 14, 2005 report from Dr. Holimon as an affirmative autopsy report, and an October 5, 2007 report from Dr. Green, as an affirmative medical opinion. Claimant's October 31, 2007 Evidence Summary Form (designating evidence in the survivor's claim). Employer submitted: an August 9, 2007 report from Dr. Tomashefski as an affirmative autopsy report, and later re-designated it as an affirmative medical opinion; a February 9, 2007 report from Dr. Oesterling as a rebuttal autopsy report; and an October 17, 2007 report from Dr. Fino as an affirmative medical report. Employer's October 25, 2007 Evidence Summary Form (designating evidence in the survivor's claim); Employer's September 28, 2015 Letter to Judge Timlin at 4. Initially, neither party submitted an Evidence Summary Form designating evidence in the miner's claim.

Contrary to employer's argument, the administrative law judge did not err in ordering the parties to designate their evidence, as the evidentiary limitations are mandatory and may not be waived. 20 C.F.R. §§725.414, 725.456(b)(1); *see Smith v. Martin County Coal Corp.*, 23 BLR 1-69, 1-74 (2004). Further, the Board has held that the evidentiary limitations set forth at 20 C.F.R. §725.414 are valid. *See Ward v. Consolidation Coal Co.*, 23 BLR 1-151, 1-154 (2006); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-58 (2004) (en banc); *see also Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 873-74, 23 BLR 2-124, 2-180-81 (D.C. Cir. 2002), *aff'g in part and rev'g in part Nat'l Mining Ass'n v. Chao*, 160 F. Supp.2d 47 (D.D.C. 2001); *Elm Grove Coal Co. v. Director, OWCP* [*Blake*], 480 F.3d 278, 297, 23 BLR 2-430, 2-460 (4th Cir. 2007). Employer has not demonstrated how the order violated its due process rights. *Goldberg v. Kelly*, 387 U.S. 254 (1970) (due process requires that the parties be given notice and the opportunity to be heard at a reasonable time and in a reasonable manner); *see also Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976). Moreover, employer has not shown how it was prejudiced by the administrative law judge's order. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). We, therefore, reject employer's argument that the administrative law judge erred in ordering the parties to designate their evidence.[9]

II. The Miner's Claim

a. Existence of Pneumoconiosis

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in the miner's claim, claimant must establish that the miner had pneumoconiosis, that his

[9] On remand, as instructed by the Board, the administrative law judge determined that Dr. Oesterling's opinion was properly considered a rebuttal autopsy report and not a medical report. Decision and Order at 5. Specifically, the administrative law judge considered that Dr. Oesterling reviewed not only Dr. Holiman's autopsy opinion, but additional medical evidence beyond the scope of Dr. Holiman's autopsy, including the report of Dr. Green. *See Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-240 (2007) (en banc); Decision and Order at 5. The administrative law judge permissibly concluded, however, that Dr. Oesterling's report should not be excluded from the record because he did not rely on the additional evidence to render his opinion regarding the existence of pneumoconiosis, but based his opinion entirely on the autopsy slides. *See Keener*, 23 BLR at 1-242 n.15; Decision and Order at 5. The administrative law judge further permissibly found that, to the extent Dr. Oesterling relied on any objectionable evidence, those portions of his opinion merited no weight. *Id.* On appeal, employer does not challenge the administrative law judge's treatment of Dr. Oesterling's opinion.

pneumoconiosis arose out of coal mine employment, that he had a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc). In this case, because the physicians agree that the miner was totally disabled by a diffuse form of interstitial pulmonary fibrosis, proving the requisite causal relationship between the miner's coal dust exposure and his interstitial pulmonary fibrosis establishes the existence of both pneumoconiosis and total disability due to pneumoconiosis under the Act and regulations. 20 C.F.R. §§718.201(a)(2), 718.202(a), 718.204(b)(2), 718.204(c); Claimant's Exhibits 2, 3; Employer's Exhibits 2, 4, 6, 8.

The administrative law judge noted that the Board previously affirmed the finding that the miner failed to establish pneumoconiosis based on the x-ray evidence and, therefore, claimant could not establish pneumoconiosis pursuant to 20 C.F.R §718.202(a)(1). Decision and Order at 6; *Funka*, BRB No. 12-0208 BLA, slip op. at 5 n.8. Pursuant to 20 C.F.R. §718.202(a)(2), the administrative law judge considered the autopsy reports of Dr. Holimon, who diagnosed the miner with pneumoconiosis, and Dr. Oesterling, who diagnosed interstitial fibrosis unrelated to coal mine dust exposure. Director's Exhibits 99, 103; Employer's Exhibits 1, 7. The administrative law judge found that Dr. Oesterling's opinion outweighed Dr. Holimon's opinion and, therefore, claimant failed to establish the existence of pneumoconiosis based on the autopsy evidence. Decision and Order at 11-13; Employer's Exhibit 1 at 19; Director's Exhibit 99. In addition, the administrative law judge determined that claimant was not entitled to any of the applicable presumptions for establishing the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(3). Decision and Order at 13.

Relevant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered the opinions of Drs. Tomashefski, Fino, and Green. Decision and Order at 14-26; Employer's Exhibits 2, 4, 6, 8; Claimant's Exhibits 2, 3. All diagnosed pulmonary fibrosis, with an associated disabling respiratory impairment, but they disagreed as to whether it was related to coal dust exposure. The administrative law judge found that Drs. Tomashefski and Fino did not diagnose clinical or legal pneumoconiosis but opined that the miner's pulmonary fibrosis was idiopathic in nature. Employer's Exhibits 2 at 5, 4 at 10; Decision and Order at 14-19. The administrative law judge found that, in contrast, Dr. Green diagnosed mild clinical pneumoconiosis and legal pneumoconiosis, in that he attributed the miner's severe interstitial fibrosis and associated disabling impairment to his forty-three years of coal dust exposure. Decision and Order at 22; Claimant's Exhibit 2 at 6-9. The administrative law judge found that Dr. Green also diagnosed legal pneumoconiosis in the form of chronic bronchitis related to coal dust exposure. Decision and Order at 22. The administrative law judge weighed the

conflicting opinions and ultimately credited Dr. Green's conclusions as being "well reasoned and well documented," in contrast to the "unreasoned" opinions of Drs. Tomashefski and Fino, to find the existence of both clinical and legal pneumoconiosis established. Decision and Order at 26.

Employer argues that the administrative law judge erred in finding that Dr. Green's opinion is sufficient to meet claimant's burden to establish the existence of pneumoconiosis. Employer's Brief at 20-29. We disagree.

The administrative law judge noted that clinical pneumoconiosis "consists of diseases recognized by the medical community as pneumoconioses, characterized by permanent deposition of substantial amounts of particulates in the lungs, and the fibrotic reaction of the lung tissue, caused by dust exposure in coal mine employment." Decision and Order at 6, *citing* 20 C.F.R. §718.201(a)(1). She also noted that legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." Decision and Order at 6, *citing* 20 C.F.R. §718.201(a)(2). In evaluating Dr. Green's opinion, the administrative law judge accurately acknowledged that Dr. Green explained that the miner's autopsy revealed severe interstitial fibrosis with black pigmentation and birefringent particles and occasional "classical" macules and micronodules of simple coal worker's pneumoconiosis. Decision and Order at 22; Claimant's Exhibits 2 at 3, 9; 3 at 14, 37. Thus, as the administrative law judge correctly noted, Dr. Green diagnosed mild, "classic" coal workers' pneumoconiosis. Decision and Order at 22, 26. The administrative law judge also noted that Dr. Green diagnosed severe and disabling interstitial fibrotic lung disease, which he opined was caused by coal mine dust exposure.[10] Decision and Order at 22-23, 26; Claimant's Exhibit 2 at 6, 9. Because Dr. Green directly attributed the miner's interstitial pulmonary fibrosis and associated disabling impairment to coal dust exposure, the administrative law judge properly found that Dr. Green diagnosed both clinical and legal pneumoconiosis, as defined at 20 C.F.R. §718.201. *See Hill v. Director, OWCP*, 562 F.3d 264, 270, 24 BLR 2-177, 2-187-88 (3d Cir. 2009) (recognizing that *any* lung disease described by a physician as significantly related to, or substantially aggravated by, dust exposure in coal mine employment falls within the regulatory definition of pneumoconiosis); Decision and Order at 22-23, 26; Claimant's Exhibit 2 at 9.

Moreover, the administrative law judge provided valid reasons for crediting Dr. Green's opinion. She noted that Dr. Green, a Board-certified pathologist, considered the

[10] Dr. Green described this aspect of the miner's disease as a "non-classical variant" of coal workers' pneumoconiosis. Claimant's Exhibit 2 at 9.

available medical evidence of record, including the autopsy slides, and the opinions of Drs. Tomashefski and Fino, together with the miner's employment and smoking histories. Decision and Order at 19-22; Claimant's Exhibits 2, 3. She also specifically found that Dr. Green explained why idiopathic pulmonary fibrosis "is not an appropriate diagnosis for a person who was exposed to fibrogenic dust,"[11] and "why [the miner's] interstitial fibrosis was due to coal mine dust despite minimal black pigment" observed on autopsy.[12] Decision and Order at 23, 26. In addition, the administrative law judge concluded that Dr. Green provided a "thorough explanation of the relationship between coal mine dust and interstitial fibrosis," and "supported his opinion by citing to medical literature," including a study that he coauthored with Dr. McConnochie.[13] *Id.* Although employer asserts that the administrative law judge failed to properly explain her

[11] The administrative law judge noted that Dr. Green explained that idiopathic pulmonary fibrosis is a diagnosis of exclusion that requires elimination of other causes of fibrosis, and, therefore, is not an appropriate diagnosis for a person, such as the miner, who has been exposed to forty-three years of fibrogenic dust. Decision and Order at 23; Claimant's Exhibit 3 at 20.

[12] The administrative law judge observed that Dr. Green explained that: the miner's fibrosis destroyed the architecture of his lungs and pneumoconiotic lesions in his lungs were incorporated into the fibrosis; there is no clear relationship between the amount of dust in the lungs and fibrosis due to coal dust exposure; and the miner's fibrosis redistributed the dust in his lungs, as demonstrated by massive silicate nodules in the miner's lymph nodes. Decision and Order at 23; Claimant's Exhibit 3 at 11, 21-22, 26.

[13] The administrative law judge also considered Dr. Green's opinion that people with coal dust-induced fibrosis have an average survival rate of nine to ten years, which is longer than people with idiopathic pulmonary fibrosis. Decision and Order at 23. The administrative law judge noted that while the record contains no medical evidence dating prior to 2003, the miner testified that he began experiencing shortness of breath prior to 1991 when he left coal mine employment, and that he began receiving treatment for his breathing problems in 1993. Decision and Order at 23; January 27, 2005 Hearing Transcript at 13, 14, 19. The administrative law judge also noted that the miner died in 2005, approximately ten years after he reported developing symptoms. Contrary to employer's contention, the administrative law judge permissibly found that Dr. Green's opinion was consistent with the miner's testimony and the other available evidence of record. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396, 22 BLR 2-386, 2-394-95 (3d Cir. 2002); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 23.

determination to credit Dr. Green's opinion that the miner's coal mine dust exposure substantially contributed to his interstitial fibrosis, the administrative law judge's decision reflects that she considered all of the relevant evidence and set forth the basis for her conclusion in accordance with the Administrative Procedure Act.[14] *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Employer additionally argues that the administrative law judge's crediting of Dr. Green's opinion diagnosing pneumoconiosis is inconsistent with her finding that claimant failed to establish the existence of pneumoconiosis based on the autopsy evidence.[15] We disagree.

The administrative law judge's finding that claimant was unable to establish pneumoconiosis based on the autopsy evidence does not preclude a finding of pneumoconiosis based on the medical opinion evidence. The regulation at 20 C.F.R. §718.202(a)(4) specifically states:

> A determination of the existence of pneumoconiosis may also be made if a physician, exercising sound medical judgment . . . finds that the miner suffered from pneumoconiosis as defined in §718.201. Any such finding must be based on objective medical evidence such as blood-gas studies, electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories. Such a finding must be supported by a reasoned medical opinion.

20 C.F.R. §718.202(a)(4). Dr. Green's medical opinion is, itself, evidence that falls within this section. It need not depend on x-ray readings or biopsy/autopsy evidence to

---

[14] The Administrative Procedure Act requires that an administrative law judge independently evaluate the evidence and provide an explanation for her findings of fact and conclusions of law. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[15] The administrative law judge found that Dr. Holimon's opinion was inadequately explained and entitled to less weight than Dr. Oesterling's opinion because he failed to explain his reasons for diagnosing pneumoconiosis in his original report; his later testimony that he observed a very heavy amount of black pigmentation in the miner's lung tissue was inconsistent with his autopsy report; and his explanation for the inconsistency between his testimony and report lacked credibility. Decision and Order at 11-13.

reach its conclusion. Indeed, requiring substantiation by x-ray, biopsy or autopsy would largely make Section 718.202(a)(4) redundant.[16]

It is therefore axiomatic that a physician is free to consider any available objective medical evidence in making his or her diagnosis. The test in assessing a medical opinion is instead one of credibility and persuasiveness: whether the physician's opinion is reasoned and documented and comports with acceptable medical procedures. *See* 20 C.F.R. § §718.202(a)(4); *Balsavage v. Director, OWCP*, 295 F.3d 390, 396, 22 BLR 2-386, 2-394-95 (3d Cir. 2002); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986). Here, as discussed above, the administrative law judge specifically found that Dr. Green persuasively explained how the autopsy evidence supported his opinion that the miner's interstitial fibrosis was caused by coal mine dust exposure. As the administrative law judge permissibly found that Dr. Green's opinion diagnosing pneumoconiosis "merits significant weight because he support[ed] his opinion with objective medical evidence, his medical findings are consistent with the other evidence of record, and he explains the basis for his conclusion,"[17] we affirm the administrative law judge's conclusion that Dr. Green's diagnosis of pneumoconiosis merits significant weight.[18] Decision and Order at 23; *see Balsavage*, 295 F.3d at 396, 22 BLR at 2-394-95; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

In addition, we reject employer's assertion that the administrative law judge erred in discrediting the opinion of Dr. Tomashefski. The administrative law judge correctly noted that Dr. Tomashefski cited to the McConnochie study as support for his opinion that the miner's fibrosis could not be due to coal dust because the miner had a limited

[16] We note, however, that Dr. Green did base his diagnosis, in part, on his review of the autopsy evidence, wherein he explained that the amount of dust he observed on the slides was sufficient to continue to irritate the miner's lungs and cause his fibrosis to progress. Claimant's Exhibit 3 at 26.

[17] Specifically, the administrative law judge noted that in addition to being supported by the autopsy evidence and citations to medical literature, Dr. Green's opinion was further supported by the miner's January 27, 2005 hearing testimony regarding the onset and treatment of his respiratory symptoms. Decision and Order at 23.

[18] As we have affirmed the administrative law judge's determination to credit Dr. Green's opinion that the miner suffered from legal pneumoconiosis in the form of interstitial pulmonary fibrosis due to coal mine-dust exposure, we need not address employer's argument that the administrative law judge erred in finding that the miner's chronic bronchitis was also legal pneumoconiosis.

amount of pigment in his lungs. Decision and Order at 24; Employer's Exhibits 2 at 5, 8 at 38. The administrative law judge found that Dr. Tomashefki's interpretation of the study was called into question by Dr. Green's explanation that the McConnochie study actually supported the conclusion that miners can have interstitial fibrosis with minimal coal dust particles in their lungs. Decision and Order at 24; Claimant's Exhibits 2, 3 at 22. The administrative law judge permissibly found that Dr. Green's interpretation of the study "merits more weight because [Dr. Green] was the co-author of the study and therefore has a better understanding of the study's conclusion." Decision and Order at 24; *see Mancia v. Director, OWCP*, 130 F.3d 579, 588, 21 BLR 2-215, 2-233-34 (3d Cir. 1997); *Lango v. Director, OWCP*, 104 F.3d 573, 577-78, 21 BLR 2-12, 2-20-21 (3d Cir. 1997). Additionally, the administrative law judge noted that, in concluding that the miner's fibrosis and associated impairment were unrelated to coal dust exposure, Dr. Tomashefski relied, in part, on the presence of honeycombing in the lungs, a condition he opined is not associated with coal dust-induced fibrosis. The administrative law judge permissibly assigned less weight to Dr. Tomashefski's opinion because he "did not cite to any medical literature or provide any explanation to support his claim." Decision and Order at 24; s*ee Soubik v. Director, OWCP*, 366 F.3d 226, 234, 23 BLR 2-82, 2-99 (3d Cir. 2004); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985). Thus, we affirm the administrative law judge's finding that Dr. Tomashefski's opinion is entitled to less weight.[19] *See Balsavage*, 295 F.3d at 396, 22 BLR at 2-394-95; Decision and Order at 25.

Furthermore, we reject employer's contention that the administrative law judge erred in her treatment of Dr. Fino's opinion. The administrative law judge correctly noted that Dr. Fino opined that the miner's pulmonary fibrosis progressed too rapidly to be coal dust-induced fibrosis, which he said was characterized by a slow, benign course of progression. Decision and Order at 25; Employer's Exhibit 6 at 10-11. Dr. Fino explained that he based his conclusion on the fact that the miner's medical records documented pulmonary fibrosis in 2003, after which time the miner got significantly worse and died in 2005. Employer's Exhibit 6 at 10.

The administrative law judge questioned the basis for Dr. Fino's opinion, noting that there is no medical evidence in the record dated prior to 2003, and observing that "[s]imply because there are no medical records addressing [the] [m]iner's pulmonary impairment prior to 2003 does not mean that his impairment developed in 2003."

[19] Because the administrative law judge provided valid bases for discrediting the opinion of Dr. Tomashefski, we need not address employer's remaining arguments regarding the weight she accorded his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

Decision and Order at 25. The administrative law judge further noted that the miner testified that he began experiencing shortness of breath prior to 1991, that he began treatment for breathing problems in 1993, and that Dr. Green opined that the miner already had advanced pulmonary fibrosis in 2003. Decision and Order at 25; January 27, 2005 Hearing Transcript at 14. In light of these factors, the administrative law judge permissibly found that Dr. Fino's opinion regarding the rapid progression of the miner's fibrosis was unsupported by the record. *Kertesz*, 788 F.2d at 163, 9 BLR at 2-8; Decision and Order at 25. Further, the administrative law judge concluded that, in light of the miner's more than forty years of coal dust exposure, Dr. Fino did not persuasively "explain why [the] [m]iner's fibrosis is idiopathic." Decision and Order at 26; *Soubik*, 366 F.3d at 234, 23 BLR at 2-99; *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211, 22 BLR 2-467, 2-481 (3d Cir. 2002). Thus, we affirm the administrative law judge's decision to accord Dr. Fino's opinion less weight.[20]

As the trier-of-fact, the administrative law judge has broad discretion to assess the credibility of the medical opinions and assign them appropriate weight. *See Balsavage*, 295 F.3d at 396, 22 BLR at 394-95; *Clark*, 12 BLR at 1-155. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988). We, therefore, affirm the administrative law judge's finding that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and we affirm the administrative law judge's determination, weighing all the relevant evidence together, that claimant established the existence of pneumoconiosis at 20 C.F.R. §718.202.

With respect to disability causation at 20 C.F.R. §718.204(c), the administrative law judge rationally discounted the opinions of Drs. Tomashefski and Fino, finding that the same reasons for which she discredited their opinions as to the existence of pneumoconiosis also undercut their opinions that the miner's disabling impairment was unrelated to pneumoconiosis. *See Soubik*, 366 F.3d at 234, 23 BLR at 2-99; *Scott v. Mason Coal Co.*, 289 F.3d 263, 269, 22 BLR 2-372, 2-384 (4th Cir. 2002); *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472, 1-473 (1986); Decision and Order at 27. Moreover, having discredited the only contrary evidence of record, and having rationally relied on the opinion of Dr. Green to find that the miner's totally disabling pulmonary

[20] Because the administrative law judge provided valid bases for discrediting the opinion of Dr. Fino, we need not address employer's remaining arguments regarding the weight she accorded his opinion. *See Kozele*, 6 BLR at 1-382 n.4.

fibrosis constituted pneumoconiosis, the administrative law judge rationally relied on his opinion to find that the miner was totally disabled due to pneumoconiosis. *Kertesz*, 788 F.2d at 163, 9 BLR at 2-8; Decision and Order at 27. Therefore, we affirm the administrative law judge's finding at 20 C.F.R. §718.204(c), and we consequently affirm the award of benefits in the miner's claim.

III. The Survivor's Claim

Having awarded benefits in the miner's claim, the administrative law judge found that claimant demonstrated her entitlement to benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012). Decision and Order at 28. Claimant filed her survivor's claim after January 1, 2005; she is an eligible survivor of the miner; her claim was pending after March 23, 2010; and the miner was determined to be eligible to receive benefits at the time of his death. Thus, we affirm the administrative law judge's finding that claimant is entitled to survivor's benefits. 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits on Remand is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge