BRB No. 07-0788 BLA

N.S. (Widow of R.S.)	)	
Claimant-Respondent	)	
v.	)	
U.S. STEEL CORPORATION	)	
	)	DATE ISSUED: 05/28/2008
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 of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Jack R. Heneks, Jr., Uniontown, Pennsylvania, for claimant.

Christopher Pierson (Burns, White & Hickton), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (06-BLA-5451) of Administrative Law Judge Daniel L. Leland awarding benefits on a 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). This case involves a survivor's claim filed on November 22, 2004. After crediting the miner with thirteen years of coal mine employment,[1] the

[1] The record indicates that the miner's last coal mine employment occurred in Pennsylvania. Director's Exhibit 4. Accordingly, the Board will apply the law of the

administrative law judge found that the autopsy evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge also found that claimant was entitled to the presumption that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge further found that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Claimant[2] responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[3]

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

Employer contends that the administrative law judge erred in finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Because this survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).[4] *See* 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v.*

United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[2] Claimant is the surviving spouse of the deceased miner, who died on October 26, 2004. Director's Exhibit 10.

[3] Because no party challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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

Director, OWCP, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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); *see Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

Employer contends that the administrative law judge erred in finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). In this case, three physicians, Drs. Reilly, Wecht, and Oesterling, addressed the cause of the miner's death. Dr. Reilly completed the miner's death certificate. Dr. Reilly attributed the miner's death to cardiogenic shock due to persistent cardiac dysrhythmia and supraventricular tachycardia. Director's Exhibit 10. In the section requesting a listing of "[o]ther significant conditions contributing to death but not resulting in the immediate cause," Dr. Reilly listed interstitial lung disease and essential hypertension. *Id.*

Dr. Wecht, the autopsy prosector, opined that the miner died due to hypertensive, arteriorsclerotic cardiovascular disease. Director's Exhibit 16. However, Dr. Wecht further stated that:

> It is further my professional opinion that [the miner's] coal workers' pneumoconiosis, which was the basis for his chronic obstructive pulmonary disease, was a substantially contributing factor in his death.
>
> ****
>
> It should be emphasized that the disease process of coal worker's pneumoconiosis, which was a substantial contributing factor in [the miner's] death, had manifested itself through various clinical signs and

---

> (3) Where the presumption set forth at §718.304 is applicable.
> (4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.
> (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).

> symptoms for several years preceding [the miner's] terminal illness and death.

Director's Exhibit 16.

Dr. Oesterling reviewed the miner's autopsy slides and medical treatment records. Dr. Oesterling opined that the miner's coal workers' pneumoconiosis did not, in any way, cause, contribute to, or hasten his death. Employer's Exhibit 1 at 23-24. Dr. Oesterling opined that the miner "died in acute cardiorespiratory failure due to ischemic heart disease superimposed upon severe chronic obstructive pulmonary disease." Employer's Exhibit 2. Dr. Oesterling opined that the miner's panlobular emphysema (chronic obstructive pulmonary disease) was not due to his coal dust exposure, but was attributable to cigarette smoking and asthma. Employer's Exhibits 1, 2.

The administrative law judge found that the miner's death certificate was entitled to "little weight" because Dr. Reilly provided "mere conclusory statements on the death certificate without preparing an explanatory report of his findings." Decision and Order at 9. Because no party challenges this finding, it is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In his consideration of the opinions of Drs. Wecht and Oesterling, the administrative law judge accorded greater weight to Dr. Wecht's opinion, regarding the cause of the miner's death, based upon Dr. Wecht's superior qualifications and experience. Decision and Order at 9. By contrast, the administrative law judge accorded less weight to Dr. Oesterling's opinion because he found that the doctor relied upon a smoking history "more extreme than anything found in the medical records." *Id.* The administrative law judge, therefore, found that the medical opinion evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Id.*

Employer argues that the administrative law judge erred in not addressing whether Dr. Wecht's opinion, regarding the cause of the miner's death, was sufficiently reasoned. We agree. Whether a medical report is sufficiently reasoned is for the administrative law judge as the fact-finder to decide. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). In this case, the administrative law judge erred in not addressing Dr. Wecht's basis for finding that the miner's coal workers' pneumoconiosis was a substantially contributing factor in his death. *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997)(holding that an administrative law judge may disregard a medical opinion that does not adequately explain the basis for its conclusion). The administrative law judge also erred in not addressing Dr. Wecht's reason for attributing the miner's chronic obstructive pulmonary disease to his coal workers' pneumoconiosis. *Id.* Consequently, the

administrative law judge, on remand, should address whether Dr. Wecht's opinions are sufficiently reasoned.

Employer also contends that the administrative law judge erred in according greater weight to Dr. Wecht's opinion based upon the doctor's superior qualifications. After noting that Dr. Wecht is a Board-certified forensic pathologist who has extensive experience in performing autopsies, the administrative law judge stated:

> Although Dr. Oesterling is a board-certified pathologist and has experience performing autopsies, I find that Dr. Wecht's status as a board-certified forensic pathologist and his extensive experience in the field entitles hs [sic] opinion to greater weight than Dr. Oesterling. Thus, I find that Dr. Wecht's conclusions are entitled to greater weight than Dr. Oesterling's findings.

Decision and Order at 9.

We agree with employer that the administrative law judge erred in not considering Dr. Oesterling's additional qualifications. As employer notes, the administrative law judge did not address the significance of Dr. Oesterling's four years of service as the county coroner in Indiana, Pennsylvania. Dr. Oesterling testified that his four years of work as the county coroner, along with his additional two years as the coroner's pathologist, included "a lot of autopsies on miners."[5] Employer's Exhibit 1 at 7. The record also reflects that Dr. Oesterling has been the Chairman of the Department of Pathology at Ohio Valley General Hospital since 1980. Employer's Exhibit 1. Dr. Oesterling also testified that he has kept current with the medical literature in regard to occupational lung diseases. *Id.* at 8.

---

[5] Dr. Oesterling testified that:

> I have done a number of autopsies on people involved in accident cases who were miners.
>
> Also, I at that time received a number of bodies from the UMW Council of Ebensberg who sent them to the hospital for me to perform the autopsies to determine whether or not there was Black Lung Disease. So I was doing over 100 autopsies a year on that basis during that six year period on Indiana.

Employer's Exhibit 1 at 7.

Although the administrative law judge permissibly considered the fact that Dr. Wecht, in addition to being a Board-certified pathologist, possessed additional professional qualifications,[6] *see generally Worhach v. Director, OWCP*, 17 BLR 1-105 (1993), the administrative law judge erred in failing to explain why these factors were more significant than Dr. Oesterling's additional qualifications.

Employer also contends that the administrative law judge erred in according less weight to Dr. Oesterling's opinion because he relied upon an inflated cigarette smoking history. In his medical report, Dr. Oesterling stated:

> I would refer you to the medical records, specifically to the records of the Monongalia General Hospital dated 6-18-92 at which time [the miner] was 68 years old and it specifies [that] "he smokes 1 to 2 packs of cigarettes per day and has done so for 58 years." Obviously a 58 year history in a 68 year old man would indicate that he had commenced his smoking habit at the age of 10. It then further states in a consultative report on 2-28-01 [that] "[the miner] quit smoking 2 years ago." Obviously this would extend his smoking habit for 67 years and thus his cigarette packs per year history is between 67 and 134 pack years. This is a truly significant smoking history and more than adequate to account for the level of [the miner's] chronic obstructive pulmonary disease.

Employer's Exhibit 2 at 4-5.

The administrative law judge rendered the following finding regarding the miner's smoking history:

> During a June 18, 1992 hospital admission for right eye blindness, Dr. Heiskell noted that the miner continued to smoke one to two packs of cigarettes per day and had been doing so for fifty[-]eight years. The record does not contain an accurate description of the miner's smoking history. Some of the hospital records list him as not smoking as of 1991 and others state as of 1999. Furthermore, the records also contain evidence that he smoked for only a short time, quitting at age thirty. Claimant testified that the miner never smoked while she knew him and that he told her that he quit at a young age.

[6] The administrative law judge, however, erred in not identifying and explaining which aspects of Dr. Wecht's "extensive experience" he found relevant in his decision to accord the physician's opinion greater weight.

Decision and Order at 4.

The administrative law judge further stated that:

> After reviewing the medical records, Dr. Oesterling found the miner to have at least a sixty-year smoking history. As discussed above, an accurate determination of the miner's smoking history is not possible from the record. Sixty-seven years, however, is more extreme than anything found in the medical records.

Decision and Order at 9.

In this case, the administrative law judge did not adequately discuss and resolve the discrepancies in the miner's reported smoking history. Although the administrative law judge noted the smoking history listed by Dr. Heiskell, the administrative law judge did not consider additional smoking histories listed in the miner's treatment records,[7] or render a specific determination as to the length of the miner's smoking history.[8] *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *see also Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985). Consequently, on remand, the administrative law judge must render a specific finding regarding the length of the miner's smoking history and address the effect that it has, if any, on the credibility of the physicians' opinions.[9]

[7] The administrative law judge did not consider Dr. Ghamande's April 7, 2004 consultation report and Dr. Abrahams' May 17, 2004 consultation report, wherein each physician listed a smoking history of two to three packages of cigarettes a year for fourteen to fifteen years. Director's Exhibit 14. In his consideration of the length of the miner's smoking history, the administrative law judge noted that claimant testified that "the miner never smoked while she knew him." Decision and Order at 4. However, in light of the fact that claimant testified that she only knew the miner for five months before she married him in August of 2003, *see* Transcript at 17, claimant's testimony only supports a finding that the miner did not smoke during this limited time period.

[8] The administrative law judge found that a smoking history of sixty-seven years was "more extreme than anything found in the medical records." However, Dr. Oesterling explained that he relied upon a sixty-seven year smoking history based upon Dr. Heiskell's listing of a fifty-eight year smoking history in his 1992 report and statements in the miner's medical records that he continued to smoke for another nine years, before quitting in 2001. Employer's Exhibit 2.

[9] Dr. Oesterling opined that the miner's type of emphysema, *i.e.*, panlobular, was not associated with coal dust inhalation. Consequently, should the administrative law judge, on remand, find that Dr. Oesterling relied upon an inaccurate smoking history, the

In light of the above-referenced errors, we vacate the administrative law judge's finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) and remand the case for further consideration.

On remand, when reconsidering whether the evidence establishes that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), the administrative law judge should address the comparative credentials of the respective physicians, the explanations for their conclusions, and the documentation underlying their medical judgments. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 22 BLR 2-386 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 9 BLR 2-1 (3d Cir. 1986).

---

administrative law judge should address whether this affects the credibility of Dr. Oesterling's opinion. The administrative law judge should also address the significance of the fact that Dr. Wecht did not indicate that he was aware of the miner's smoking history. *See Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Rickey v. Director, OWCP*, 7 BLR 1-106 (1984) (holding that an administrative law judge may properly discredit the opinion of a physician that is based upon an inaccurate or incomplete picture of the miner's health).

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

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge