

BRB No. 08-0687 BLA

J.S.	)	
(Widow of C.S.)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 05/21/2009
APOGEE COAL COMPANY	)	
	)	
and	)	
	)	
UNDERWRITERS SAFETY AND CLAIMS	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Ralph D. Carter (Barret, Haynes, May & Carter P.S.C.), Hazard, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (05-BLA-6307) of Administrative Law Judge Joseph E. Kane 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).<sup>1</sup> In a decision dated May 27, 2008, the administrative law judge credited the miner with twenty-five years of coal mine employment,<sup>2</sup> as stipulated by the parties, and found that employer was collaterally estopped from relitigating the existence of pneumoconiosis arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a), 718.203(b), based on the prior findings in the miner's successful claim for benefits. The administrative law judge further found, however, that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his evaluation of the medical opinion evidence relevant to the cause of the miner's death, pursuant to 20 C.F.R. §718.205(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.<sup>3</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to

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<sup>1</sup> The miner died on June 29, 2004. Director's Exhibit 9. He had filed a claim for benefits on January 23, 1992. Benefits were awarded by Administrative Law Judge J. Michael O'Neill on April 12, 1994. Director's Exhibits 1-1, 1-34. Claimant filed her survivor's claim on July 27, 2004. Director's Exhibit 3.

<sup>2</sup> The record indicates that the miner's coal mine employment was in Kentucky. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

<sup>3</sup> The administrative law judge's finding of twenty-five years of coal mine employment, and his application of the doctrine of collateral estoppel to find the existence of pneumoconiosis arising out of coal mine employment established in the survivor's claim, pursuant to 20 C.F.R. §§718.202(a), 718.203(b), are affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner's death, or was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(c)(1)-(4). 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); *Mills v. Director, OWCP*, 348 F.3d 133, 136, 23 BLR 2-12, 2-17 (6th Cir. 2003); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

In determining whether pneumoconiosis, as defined in 20 C.F.R. §718.201, hastened the miner's death pursuant to 20 C.F.R. §718.205(c), the administrative law judge initially noted that the miner's death certificate listed the immediate cause of death as a myocardial infarction, with no other significant conditions listed. Decision and Order at 8; Director's Exhibit 9. In addition, the administrative law judge considered the opinions of Drs. Baker and Sandlin, that the miner's pneumoconiosis hastened his death, and the opinion of Dr. Jarboe, that the miner died suddenly of a myocardial infarction, and his death was unrelated to pneumoconiosis. Decision and Order at 4-6; Claimant's Exhibits 1-3; Director's Exhibit 11; Employer's Exhibits 1, 2.

The administrative law judge discredited the opinions of Drs. Baker and Sandlin because they were not well-reasoned, and therefore, were not sufficient to meet claimant's burden of proof. Decision and Order at 10-12; Claimant's Exhibits 1-3. By contrast, the administrative law judge credited the opinion of Dr. Jarboe as well-reasoned and well-documented. Decision and Order at 12; Employer's Exhibits 1, 2.

Claimant asserts that the administrative law judge's determination to discredit the opinions of Drs. Sandlin and Baker, that the miner's pneumoconiosis hastened his death, and to credit the contrary opinion of Dr. Jarboe, fails to comply with both the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(a), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), and the Black Lung Benefits Act requirement that all relevant evidence be considered. *See* 30 U.S.C. §923(b); Claimant's Brief at 3-11. In addition, claimant contends that the administrative law judge failed to consider that Dr. Jarboe's opinion is "borderline hostile to the Act." Claimant's Brief at 8. Claimant's arguments lack merit.

Considering the report of Dr. Baker, the administrative law judge correctly noted that Dr. Baker opined that the miner died due to an acute myocardial infarction, but also

suffered from legal pneumoconiosis,<sup>4</sup> in the form of chronic obstructive pulmonary disease (COPD) due in part to coal dust exposure. The administrative law judge considered that Dr. Baker discussed several conditions related to the miner's COPD that he opined could have contributed to a cardiac death.<sup>5</sup> Decision and Order at 4-5; Claimant's Exhibit 2 at 2-4; Claimant's Exhibit 3. The administrative law judge found, however, that Dr. Baker's opinion was too speculative and equivocal to sustain claimant's burden of proof. Decision and Order at 12.

Contrary to claimant's assertion, the administrative law judge did not selectively analyze Dr. Baker's opinion; he properly considered the entirety of Dr. Baker's explanation regarding the relationship between inflammatory markers, COPD, and heart disease. Decision and Order at 4-5, 11-12; Claimant's Brief at 6. The administrative law judge permissibly found that, assuming that the miner suffered from legal pneumoconiosis,<sup>6</sup> Dr. Baker's opinion was not well-reasoned, because it was based on

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<sup>4</sup> 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). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

<sup>5</sup> As summarized by the administrative law judge, Decision and Order at 4-5, Dr. Baker discussed the "possible relationship" between the miner's chronic obstructive pulmonary disease (COPD) and ischemic heart disease, noting that the results of several studies suggested that "systemic inflammation may be involved in many disorders associated with COPD." Claimant's Exhibit 2 at 4. Dr. Baker further explained that increased inflammatory markers in patients with COPD "may be associated with increasing coronary atherosclerosis and ultimately ischemic heart disease and possible death" and "may explain . . . the high prevalence of systemic complications such as . . . cardiovascular disease among patients with COPD." Claimant's Exhibit 2 at 4. Dr. Baker also opined that the miner's blood gas studies revealed hyperventilation and arterial hypoxemia that "could have contributed to some extent to a sudden cardiac death." Claimant's Exhibit 2 at 3-4. Finally, Dr. Baker stated that a study suggested that, through the use of inhalers for the treatment of obstructive disease, "ischemia may be precipitated along with congestive heart failure, arrhythmia, and sudden death." Claimant's Exhibit 2 at 5. Thus, Dr. Baker concluded that the miner's use of inhalers "could have been contributory" to his death. *Id.*

<sup>6</sup> The administrative law judge accurately noted that the award of benefits in the miner's claim did not expressly state whether the miner had established the existence of the legal or clinical form of pneumoconiosis. Decision and Order at 11; Director's Exhibit 1.

studies concluding only that COPD “may” lead to systemic inflammation, which “may” be associated with heart disease and “possible” death. See *Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 882, 22 BLR 2-25, 2-42 (6th Cir. 2000); *Griffith v. Director, OWCP*, 49 F.3d 184, 186-87, 19 BLR 2-111, 2-117 (6th Cir. 1995); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Decision and Order at 11-12. The administrative law judge also found Dr. Baker’s alternative explanations, that hyperventilation “could have contributed” to the miner’s sudden cardiac death, or that the miner’s use of inhalers “could have been contributory” to the miner’s death, to be similarly couched in speculative and equivocal language. See *Holdman*, 202 F.3d at 882, 22 BLR at 2-42; *Griffith*, 49 F.3d at 186-87, 19 BLR at 2-117; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). Thus, the administrative law judge permissibly concluded that Dr. Baker’s opinion was not sufficient to meet claimant’s burden of proof to establish that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). See *Holdman*, 202 F.3d at 882, 22 BLR at 2-42; *Griffith*, 49 F.3d at 186-87, 19 BLR at 2-117; Decision and Order at 12.

Turning to the opinion of Dr. Sandlin, the miner’s treating physician, the administrative law judge noted, correctly, that Dr. Sandlin completed a questionnaire in which he indicated by check mark that pneumoconiosis hastened the miner’s death. Decision and Order at 4; Claimant’s Exhibit 1. The administrative law judge permissibly accorded Dr. Sandlin’s opinion little weight because the physician failed to provide any reasoning for his conclusion. See *Peabody Coal Co. v. Groves*, 277 F.3d 829, 834, 22 BLR 2-320, 2-327 (6th Cir. 2002); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 10; Claimant’s Brief at 4. Thus, the administrative law judge acted within his discretion in finding that despite Dr. Sandlin’s relationship with the miner as his treating physician, Dr. Sandlin’s opinion was “insufficiently reasoned to support an award of benefits.” See 20 C.F.R. §718.104(d)(5); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-647 (6th Cir. 2003); *Groves*, 277 F.3d at 834, 22 BLR at 2-327; Decision and Order at 10, 11 n.5.

Claimant concedes that Dr. Sandlin provided no reasoning to support his conclusion. Claimant’s Brief at 4. Claimant asserts, however, that the administrative law judge erred in failing to consider whether Dr. Sandlin’s opinion nonetheless supported that of Dr. Baker. Claimant’s Brief at 4. Claimant is asking the Board to reweigh the evidence, which we are not authorized to do. *Anderson*, 12 BLR at 1-113. Contrary to claimant’s argument, as the administrative law judge permissibly determined that both Dr. Sandlin’s and Dr. Baker’s opinions were not credible, the administrative law judge was not required to weigh the physicians’ opinions together.

Claimant next contends that the administrative law judge erred in crediting Dr. Jarboe's opinion, which, claimant asserts, is hostile to the Act and contrary to the medical evidence and lay testimony of record. Claimant's Brief at 8-11. We need not resolve these issues. As discussed above, the administrative law judge permissibly found that the opinions of Drs. Baker and Sandlin, standing alone, are not sufficient to meet claimant's burden to establish that the miner's death was due to pneumoconiosis. *See Madden v. Gopher Mining Co.*, 21 BLR 1-122, 1-124-25 (1999); Decision and Order at 12.

In sum, the administrative law judge considered all of the relevant evidence, and he complied with the APA's requirement that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(a); *see Schaaf v. Mathews*, 574 F.2d 157 (3d Cir. 1978); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). As the administrative law judge properly analyzed the medical opinions and explained his reasons for discrediting the opinions of Drs. Baker and Sandlin, the only physicians to opine that pneumoconiosis played any role in the miner's death, we affirm the administrative law judge's finding that claimant did not carry her burden to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Trumbo*, 17 BLR at 1-88-89 and n.4; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Trent*, 11 BLR at 1-27.

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge