BRB No. 12-0483 BLA

NORMA J. PARSONS (Widow of BILLY J. PARSONS)	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED: 05/22/2013
WESTMORELAND COAL COMPANY	)	
Employer-Respondent	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Norma J. Parsons, Pennington Gap, Virginia, *pro se*.

Paul E. Frampton and Thomas M. Hancock (Bowles Rice McDavid Graff & Love), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals the Decision and Order (10-BLA-5299) of Administrative Law Judge Richard T. Stansell-Gamm denying benefits on

[1] Jerry Murphree, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Murphree is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88, 1-89-90 (1995)(Order).

a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011)(the Act).[2] This case involves claimant's third request for modification of a survivor's claim filed on May 3, 1999.[3] Director's Exhibit 4. In the initial Decision and Order, Administrative Law Judge Mollie W. Neal found that the evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), but did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, Judge Neal denied benefits. Director's Exhibit 77. Pursuant to claimant's appeal, the Board affirmed the denial of benefits. *See Parsons v. Westmoreland Coal Co.*, BRB No. 02-0133 (June 28, 2002)(unpub.); Director's Exhibit 84.

Claimant filed a request for modification on June 16, 2003. Director's Exhibit 113. Administrative Law Judge Richard T. Stansell-Gamm (the administrative law judge) found that claimant did not establish a mistake in a determination of fact. 20 C.F.R. §725.310(a) (2000). Accordingly, the administrative law judge denied benefits. On appeal, the Board affirmed the denial of benefits. *See Parsons v. Westmoreland Coal Co.*, BRB No. 06-0772 BLA (June 28, 2007)(unpub.); Director's Exhibit 120.

Claimant again requested modification on June 20, 2008, which was denied by the district director on November 24, 2008. Director's Exhibits 121, 123. Claimant took no further action with respect to her second request for modification, and on August 24, 2009, she filed her third and current request for modification. Director's Exhibit 125. Following the district director's denial of modification, claimant requested a hearing, and the claim was forwarded to the Office of Administrative Law Judges. Director's Exhibits 129, 132.

In a Decision and Order dated May 31, 2012, the administrative law judge credited the miner with at least eighteen years of coal mine employment,[4] and found that the

[2] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2010). All citations to the regulations, unless otherwise noted, refer to the amended regulations. Where a former version of a regulation remains applicable, we will cite to the 2000 version of the Code of Federal Regulations.

[3] The 2010 amendments to the Act, which became effective on March 23, 2010, do not apply to this case, since it involves a survivor's claim filed before January 1, 2005.

[4] The record indicates that the miner's coal mine employment was in Virginia. Director's Exhibits 5, 8. Accordingly, this case arises within the jurisdiction of the

miner had simple pneumoconiosis arising out of coal mine employment, as stipulated by the parties. The administrative law judge further found, however, that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The administrative law judge, therefore, found that the evidence did not establish a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000). Accordingly, the administrative law judge denied claimant's modification request, and denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of her modification request. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176, 1-177 (1989). We 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).

To establish entitlement to survivor's benefits, 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 pneumoconiosis. *See* 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.205, 718.304; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993). For survivors' claims filed on or after January 1, 1982, and before January 1, 2005, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 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); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 979-80, 16 BLR 2-90, 2-93 (4th Cir. 1992). Failure to establish any one of these elements precludes entitlement. *See* 20 C.F.R. §718.205(a)(1)-(3); *Trumbo*, 17 BLR at 1-87.

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

The sole basis available for modification in a survivor's claim is that a mistake in a determination of fact was made in the prior decision. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989). When a request for modification is filed, "any mistake may be corrected [by the administrative law judge], including the ultimate issue of benefits eligibility." *Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 497, 22 BLR 2-1, 2-11 (4th Cir. 1999); *Jessee v. Director, OWCP*, 5 F.3d 723, 725, 18 BLR 2-26, 2-28 (4th Cir. 1993).

20 C.F.R. §718.304

The administrative law judge initially considered whether the evidence established the existence of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304. Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), implemented by 20 C.F.R. §718.304, provides that there is an irrebuttable presumption of death due to pneumoconiosis if the miner suffered from a chronic dust disease of the lung which, (A) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (C) when diagnosed by other means, is a condition that would yield results equivalent to (A) or (B). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The United States Court of Appeals for the Fourth Circuit has held that, "[b]ecause prong (A) sets out an entirely objective scientific standard" for diagnosing complicated pneumoconiosis, that is, an x-ray opacity greater than one centimeter in diameter, the administrative law judge must determine whether a condition which is diagnosed by biopsy or autopsy under prong (B) or by other means under prong (C) would show as a greater-than-one-centimeter opacity if it were seen on a chest x-ray. *E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999). In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304, the administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117 (4th Cir. 1993); *Gollie v. Elkay Mining Corp.*, 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991)(en banc).

Evaluating the x-ray evidence relevant to the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a), the administrative law judge considered 125 readings of 46 x-rays submitted with claimant's initial claim, and her three requests for modification. The administrative law judge correctly found that of these, all but two interpretations were negative for the presence of large pulmonary abnormalities. Dr. Lee read a September 23, 1996 x-ray as demonstrating a one centimeter mass. Director's Exhibit 13. However, the administrative law judge properly

found that this could not establish the existence of complicated pneumoconiosis, as the regulations require that a mass seen on x-ray be greater than one centimeter in diameter. 20 C.F.R. §718.304(a); Decision and Order at 11; Director's Exhibit 13. The administrative law judge next found that while Dr. Mathur, a Board-certified radiologist and B reader, read a February 19, 1997 x-ray as positive for a Category A large opacity consistent with complicated pneumoconiosis, Drs. Cappiello, Kim, Scott, Shipley, Spitz, Wheeler, and Wiot, who are equally qualified, read the same x-ray as negative for large opacities. Decision and Order at 11; Director's Exhibits 3, 56. Thus, the administrative law judge permissibly found the February 19, 1997 x-ray to be negative for complicated pneumoconiosis, based on the preponderance of the readings by highly qualified readers. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52-53, 16 BLR 2-61, 2-66 (4th Cir. 1992); *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-300 (2003). As the administrative law judge properly performed both a quantitative and qualitative analysis of the x-ray evidence, we affirm the administrative law judge's finding that claimant did not establish complicated pneumoconiosis by x-ray pursuant to 20 C.F.R. §718.304(a).

Turning to the pathology evidence relevant to the existence of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304(b), the administrative law judge considered the opinions of Drs. Green, Caffrey, Kahn, Naeye, and Patel.[5] Dr. Green diagnosed progressive massive fibrosis, based on his observance of three lesions of complicated pneumoconiosis, measured at 1.0, 1.5, and 1.7 centimeters. Director's Exhibit 125. In contrast, Drs. Caffrey and Naeye[6] explicitly opined that the miner did not have progressive massive fibrosis or complicated pneumoconiosis, Employer's Exhibits 2, 10 at 30-33, 36; Director's Exhibits 12, 41, and Drs. Kahn and Patel neither diagnosed

[5] The administrative law judge properly found that Dr. Green is Board-certified in anatomic pathology, and Drs. Caffrey, Kahn, Naeye, and Patel are Board-certified in anatomic and clinical pathology. Decision and Order at 13-18.

[6] The administrative law judge noted that Dr. Naeye's opinion was somewhat unclear, as he identified areas of old anthrasilicotic macronodules measuring up to 1.3 centimeters, representing a conglomeration of micronodules that grew together, but opined that the "lesions in no way resemble the lesions of complicated coal workers' pneumoconiosis." Decision and Order at 22; Director's Exhibits 12, 41, 48 at 13-14. The administrative law judge permissibly concluded, however, that as Dr. Naeye did not opine that the 1.3 centimeter lesion would appear as larger than one centimeter on x-ray, his pathology report is nonetheless insufficient to establish the presence of complicated pneumoconiosis. *See E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999); Decision and Order at 22; Director's Exhibits 12, 41, 48.

progressive massive fibrosis or complicated pneumoconiosis, nor identified the presence of large lesions in the lung. Director's Exhibits 11, 14, 15. The administrative law judge found that complicated pneumoconiosis was not established based on the pathology evidence. Decision and Order at 21-23.

Substantial evidence supports the administrative law judge's finding that complicated pneumoconiosis was not established by the pathology evidence, as no physician stated that any masses seen on autopsy would appear on an x-ray as an opacity measuring greater than one centimeter.[7] *See Scarbro*, 220 F.3d at 256, 22 BLR at 2-101; *Blankenship*, 177 F.3d at 243, 22 BLR at 2-560-61; Decision and Order at 21-23. Moreover, the administrative law judge permissibly concluded that, even assuming that the 1.7 centimeter mass identified by Dr. Green would appear as greater than one centimeter on x-ray, Dr. Green's opinion is outweighed by the contrary opinions of Drs. Caffrey and Patel, whom the administrative law judge found are similarly qualified to Dr. Green, and who opined that the miner's lung tissue did not contain a pulmonary mass that is greater than one centimeter, and consistent with pneumoconiosis.[8] *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281, 18 BLR 2A-1, 2A-12 (1994). Thus, we affirm the administrative law judge's finding that claimant did not establish complicated pneumoconiosis by a preponderance of the probative pathology evidence pursuant to 20 C.F.R. §718.304(b), as it is supported by substantial evidence and contains no reversible error. *See Lane v. Union Carbide Corp.*, 105 F.2d 166, 174, 21 BLR 2-34, 2-48 (4th Cir 1997).

Pursuant to 20 C.F.R. §718.304(c), the administrative law judge considered five interpretations of two computerized tomography (CT) scans, performed on October 22, 1996, and September 15, 1997.[9] The administrative law judge initially found that Dr.

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[7] Dr. Caffrey testified that he did not see any changes on autopsy that would appear on x-ray as a one centimeter opacity. Employer's Exhibit 10 at 31-32.

[8] The administrative law judge further found, as was within his discretion, that the pathology assessments of Drs. Patel, Naeye, and Caffrey, that the miner had mild to moderate simple coal workers' pneumoconiosis and silicosis, outweighed Dr. Green's opinion that the miner suffered from moderately severe simple coal workers' pneumoconiosis and severe interstitial fibrosis. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281, 18 BLR 2A-1, 2A-12 (1994); Decision and Order at 23. In addition, the administrative law judge permissibly found that the preponderance of the probative pathology evidence establishes that the degree of the miner's coal mine dust-related emphysema was mild. *Id.*

[9] Dr. Phillips opined that the 1997 computerized tomography (CT) scan revealed "specific pathologic soft tissue densities" that were non-calcified and could represent

Phillips' sole reading of the 1997 CT scan, while uncontradicted, was inconclusive as to the existence of complicated pneumoconiosis, because while Dr. Phillips identified soft tissue densities from several possible causes, he did not provide any measurements for the densities, or indicate that the masses were associated with coal mine dust exposure. Decision and Order at 25; Director's Exhibit 3. With respect to the 1996 CT scan, as none of the physicians who interpreted the scan opined that the changes they observed represented pneumoconiosis, the administrative law judge permissibly concluded that the weight of the CT scan evidence was negative for complicated pneumoconiosis. *See Ondecko*, 512 U.S. at 281, 18 BLR at 2A-12; Decision and Order at 24-25; Director's Exhibits 3, 13, 55. We therefore affirm, as supported by substantial evidence, the administrative law judge's finding that claimant did not establish complicated pneumoconiosis by CT scan evidence pursuant to 20 C.F.R. §718.304(c). *See Lane*, 105 F.2d at 174, 21 BLR at 2-48. As claimant did not establish that the miner had complicated pneumoconiosis at the time of his death, claimant is not entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.304.[10] Thus, in order to establish entitlement, claimant must establish that the miner's death was hastened by pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

20 C.F.R. §718.205(c)

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pulmonary fibrosis, scarring, or neoplasm. Director's Exhibit 3. Dr. Lee interpreted the 1996 CT scan as showing a 1.0 to 1.5 centimeter soft tissue nodular density, which may represent a pleural-based mass. Director's Exhibit 13. Dr. Wheeler identified a 1.5 x 2.0 centimeter mass on the 1996 scan, most likely due to healed tuberculosis, and opined that there was no evidence of pneumoconiosis. Director's Exhibits 3, 55. Dr. Fishman noted the presence of an ill-defined nodule on the 1996 scan, but opined there was no evidence of pneumoconiosis. Director's Exhibits 3, 55. Finally, Dr. Fino stated that the 1996 CT scan was negative for pneumoconiosis and showed no changes consistent with coal mine dust-related disease. Director's Exhibits 3, 55.

[10] The record also contains the medical opinions of Drs. Castle, Dahhan, Fino, Hippensteel, and Rosenberg, who opined that the miner did not have complicated pneumoconiosis, Employer's Exhibits 1, 3, 4, 6, 7 at 3, 9 at 13-14, and Drs. Molony, Morgan, and Zayed, who rendered no opinion on the existence of complicated pneumoconiosis. Director's Exhibits 10, 14, 61, 109-10. Further, Drs. Abrahams, Fleenor, Michos, Miller, Nash, Paranthaman, Sargent, Smiddy, and Taylor did not diagnose complicated pneumoconiosis.

The administrative law judge next considered whether claimant established that the miner's death was hastened by pneumoconiosis, pursuant to 20 C.F.R. §718.205(c)(5). *See Sparks*, 213 F.3d at 190, 22 BLR at5 2-259. The administrative law judge considered the opinions of Drs. Caffrey, Castle, Dahhan, Fino, Hippensteel, Morgan, Rosenberg, Green, Molony, and Zayed.[11] *See* Decision and Order at 30-47. All the physicians agreed that the miner suffered a sudden cardiac death. However, Drs. Caffrey, Castle, Dahhan, Fino, Hippensteel, Morgan, and Rosenberg opined that the miner's sudden cardiac death was not hastened by pneumoconiosis, while Drs. Green, Molony, and Zayed attributed the miner's death, in part, to pneumoconiosis. The administrative law judge credited the opinions of Drs. Caffrey, Castle, Dahhan, Fino, Hippensteel, Morgan, and Rosenberg, over the contrary opinions of Drs. Green, Molony, and Zayed, to conclude that claimant did not establish that pneumoconiosis hastened the miner's death by a preponderance of the medical opinion evidence. *Id*. at 47-48.

Having earlier found that the probative pathology evidence established that the miner suffered from mild to moderate simple pneumoconiosis, and mild coal dust-related emphysema, the administrative law judge permissibly credited the opinions of Drs. Caffrey, Castle, Dahhan, Fino, Hippensteel, Morgan, and Rosenberg, as they reasonably relied upon the credible pathology evidence to conclude that the miner's pneumoconiosis was not severe enough to have played any role in his death.[12] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); Decision and Order at 48. The administrative law judge further found that the opinions of Drs. Castle and Rosenberg, that the miner's lung disease did not sufficiently interfere with the

[11] The administrative law judge correctly noted that Drs. Kahn and Patel did not render an opinion regarding the miner's cause of death. Decision and Order at 30 n.28; Director's Exhibits 11, 14, 15. The administrative law judge permissibly accorded little probative value to the remaining opinions of Drs. Abrahams, Fleenor, Michos, Miller, Nash, Paranthaman, Sargent, Smiddy, and Taylor, as these opinions pre-dated the miner's death. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); Decision and Order at 30 n.28; Director's Exhibits 2, 3, 110, 121.

[12] The administrative law judge accorded diminished probative value to Dr. Naeye's opinion, that the miner's death was not hastened by pneumoconiosis, as it was based on Dr. Naeye's unclear pathology finding regarding the existence of complicated pneumoconiosis. *See* Decision and Order at 30 n.28.

oxygenation of blood to have contributed to his heart condition, were further supported by the blood gas study evidence.[13] *Id.*

Considering the contrary evidence, the administrative law judge reasonably discounted Dr. Zayed's opinion as equivocal and insufficiently reasoned, because Dr. Zayed did not state with certainty that the miner's coal workers' pneumoconiosis actually caused the miner to suffer a fatal heart attack, and did not refer to any objective medical evidence to support his opinion.[14] *See U. S. Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 391, 21 BLR 2-639, 2-653 (4th Cir. 1999); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(en banc); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); Decision and Order at 29, 47; Director's Exhibit 14. The administrative law judge permissibly discounted Dr. Molony's opinion, that the miner "had serious cardiac disease which caused death but lung disease was a contributing factor," finding that Dr. Molony failed to identify the objective evidence that supported his opinion, and further did not explain how the miner's mild coal workers' pneumoconiosis contributed to his death. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision and Order at 47; Director's Exhibit 110. Lastly, the administrative law judge rationally discounted Dr. Green's opinion, that pneumoconiosis was a significant contributing factor to the miner's death, because Dr. Green largely relied on his belief that the miner had complicated pneumoconiosis, severe simple coal workers' pneumoconiosis, and extensive coal mine dust-related emphysema,

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[13] The administrative law judge correctly found that all of the blood gas studies were non-qualifying, and thus did not establish total disability during the miner's lifetime. Decision and Order at 27; Director's Exhibits 1-3, 51, 54, 110. Additionally, the administrative law judge acted within his discretion in finding that the preponderance of the pulmonary function studies was non-qualifying, and thus did not establish total disability in the miner's lifetime. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281, 18 BLR 2A-1, 2A-12 (1994); Decision and Order at 26-27; Director's Exhibits 1-3, 51, 54. Moreover, the administrative law judge reasonably found that the weight of the evidence did not establish that the miner suffered from cor pulmonale. *See Ondecko*, 512 U.S. at 281, 18 BLR at 2A-12; Decision and Order at 28-30; Employer's Exhibits 1, 6, 9 at 19, 10 at 34-35.

[14] Dr. Zayed opined that the miner's death was due to "a *possible* acute [m]yocardial [i]nfarction," and that the miner's "black lung with chronic lung disease, either *could* cause respiratory arrest and . . . lead to a fatal ventricular arrhythmia" or, as a co-morbid condition "*could* contribute to this condition with a resultant worse outcome." Decision and Order at 29; Director's Exhibit 14 (Dr. Zayed's April 26, 1999 report)(emphasis added).

contrary to the administrative law judge's own findings.[15] *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211-12, 22 BLR 2-162, 2-175 (4th Cir. 2000); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106, 1-107 (1986); Decision and Order at 47-48; Director's Exhibit 125.

As the administrative law judge rationally credited the opinions supportive of a finding that the miner's death was not hastened by pneumoconiosis, and reasonably discounted the opinions supportive of a finding that the miner's death was due, in part, to pneumoconiosis, we affirm the administrative law judge's finding that claimant did not establish that the miner's death was hastened by pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Consequently, we affirm the administrative law judge's conclusion that the district director made no mistake in a determination of fact in denying claimant's third modification request on the ground that claimant failed to establish that the miner's death was due to pneumoconiosis. We therefore affirm the administrative law judge's denial of claimant's third modification request of her survivor's claim, as claimant did not establish entitlement under either 20 C.F.R. §718.205(c) or 20 C.F.R. §718.304.

[15] Dr. Green reasoned that the miner's complicated pneumoconiosis, moderately severe simple coal workers' pneumoconiosis, and coal-induced chronic obstructive pulmonary disease would significantly increase the miner's chance of cardiac failure since the above diseases would "impair [the miner's] ability to transfer oxygen from the air to the blood, reducing the oxygen supply to the heart causing an increased workload on the right heart." Director's Exhibit 125.

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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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge