BRB No. 00-1190 BLA

LINDA WATKINS (Widow of CLAUDE W. WATKINS)	)	
Claimant-Respondent	)	
v.	)	
U.S. STEEL MINING COMPANY	)	DATE ISSUED:
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 Granting Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garton & Hayes), Bluefield, West Virginia, for claimant.

Howard G. Salisbury, Jr. (Kay, Casto & Chaney PLLC), Charleston, West Virginia, for employer.

Sarah M. Hurley (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits (2000-BLA-0425) of Administrative Law Judge Linda S. Chapman awarding benefits on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act).[1] The administrative law judge credited the miner with twenty-five years of coal mine employment and found the evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b) (2000).[2] The administrative law judge

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[1]Claimant, Linda Watkins, is the surviving spouse of the deceased miner, who died on April 4, 1999. Director's Exhibit 7. Claimant filed her claim for survivor's benefits on June 2, 1999. Director's Exhibit 1. The miner's claims filed on January 6, 1994, January 26, 1995 and March 17, 1997 were denied by the Office of Workers' Compensation Programs on June 24, 1994, October 24, 1995 and July 31, 1997. Director's Exhibits 20-22. The miner did not appeal the denial, nor otherwise pursue the first two claims, and on October 8, 1997 the miner withdrew his appeal of the third claim. Director's Exhibit 22.

[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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

further found that claimant established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2) (2000). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's findings that claimant established the existence of pneumoconiosis and that pneumoconiosis was a contributing cause of the miner's death. In response, claimant argues that the administrative law judge's award of survivor's benefits is supported by substantial evidence. The Director, Office of Workers' Compensation Programs, did not file a brief on the merits of this appeal.[3]

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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c), 718.304 (2001); *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP,* 11 BLR 1-85 (1988). 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) (2001); *see also Shuff v. Cedar Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S. Ct. 969 (1993).

[3]We affirm the administrative law judge's findings with respect to the length of the miner's coal mine employment and pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3), as these findings have not been challenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In considering whether claimant established that the miner had pneumoconiosis, the administrative law judge noted that the United States Court of Appeals for the Fourth Circuit held in *Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR (4th Cir. 2000), that in order to determine whether the existence of pneumoconiosis is established, all evidence relevant to Section 718.202(a)(1)-(4) must be weighed together. The administrative law judge considered the x-ray evidence under Section 718.202(a)(1) (2000) and found that there were four x-rays interpreted according to the ILO-U/C classification standards designated in 20 C.F.R. §718.102(b) (2000) and "numerous descriptive interpretations of various x-rays" that were taken during the miner's hospitalizations. Decision and Order at 6. The administrative law judge determined, based upon the x-ray readings which provided an ILO-U/C classification, that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(1) (2000) by a preponderance of the evidence. *Id*. at 7. With respect to the narrative x-ray interpretations, the administrative law judge further determined that although many of the physicians interpreting the chest x-rays noted the presence of abnormalities, none of these physicians made any specific findings of pneumoconiosis or provided an ILO-U/C classification. The administrative law judge also noted that the x-rays in question were not obtained for the purpose of diagnosing pneumoconiosis. The administrative law judge, therefore, did not consider these readings to be positive or negative for pneumoconiosis. *Id*. at 6, 12 n.6.

Having determined that Section 718.202(a)(2) and (a)(3) are not applicable in this case, the administrative law judge then turned to a consideration of the medical opinion evidence of record under Section 718.202(a)(4) (2000). The administrative law judge accorded greatest weight to the opinions of Drs. Jabour and Ranavaya, that the miner had pneumoconiosis, as supported by the administrative law judge's conclusion that the x-ray evidence established the presence of pneumoconiosis. *Id*. at 13. The administrative law judge concluded, therefore, that claimant established that the miner suffered from pneumoconiosis by a preponderance of the evidence relevant to Section 718.202(a)(1)-(4) (2000). *Id*.

Employer argues that in weighing the evidence relevant to the existence of pneumoconiosis together, the administrative law judge ignored the "numerous x-ray interpretations making no mention of pneumoconiosis." Employer's Brief at 6. Employer further argues that the administrative law judge erred in relying upon her finding with respect to the x-ray evidence to discredit the opinion of Dr. Hippensteel, a Board-certified pulmonologist, that the miner did not suffer from

pneumoconiosis and that pneumoconiosis did not cause the miner's death. Employer's contentions are without merit.

The significance of narrative x-ray readings in which pneumoconiosis is not mentioned is an issue to be resolved by the administrative law judge in the exercise of his or her discretion as fact-finder. *See Church v. Eastern Associated Coal Corp.,* 20 BLR 1-8 (1996), *modified on recon*., 21 BLR 1-52 (1997); *Marra v. Consolidation Coal Co.*, 7 BLR 1-216 (1984). In the present case, the administrative law judge acted within her discretion in treating the narrative readings as neutral on the question of the existence of pneumoconiosis, as the x-rays were not taken for the purpose of determining whether the miner had pneumoconiosis, none of the readings made any specific findings regarding pneumoconiosis, and the films were not classified under the ILO-U/C system.[4] Decision and Order at 6, 12 n.6; *see Marra*, *supra*. Accordingly, we affirm the administrative law judge's finding that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(4) and decline to vacate the administrative law judge's finding that Dr. Hippensteel's opinion regarding the existence of pneumoconiosis was entitled to less weight since he considered the x-rays obtained while the miner was hospitalized as negative for pneumoconiosis.[5] Decision and Order at 12 n.6; *see Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Marra*, *supra*.

Regarding Section 718.205(c) (2000), employer argues the administrative law judge erred in relying upon Dr. Harden's opinion to find that pneumoconiosis contributed to the miner's death based solely upon Dr. Harden's status as the miner's attending physician. *Id*. at 13. Employer asserts that inasmuch as Dr. Harden's qualifications are not of record and his reports are "unsupported, speculative single paragraph letters" concluding that pneumoconiosis was a "risk factor" which could impede the miner's recovery from pneumonia, the

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[4]There is no indication in the record that employer did not have the opportunity to have the x-rays obtained during the miner's hospitalization reread in order to ascertain whether they were negative for pneumoconiosis.

[5]The administrative law judge's finding that the x-ray evidence is sufficient to establish the existence of pneumoconiosis does not affect Dr. Hippensteel's opinion regarding the cause of the miner's death, as Dr. Hippensteel stated that even assuming that the miner had pneumoconiosis, pneumoconiosis did not contribute to his death. Employer's Exhibit 1.

administrative law judge erred in crediting his opinion. Employer's Brief at 5. This contention has merit.

Although an administrative law judge may give greater weight to a medical report based upon the doctor's status as a treating or attending physician, this is only one factor to be considered in assessing a physician's opinion. In its decisions in *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); and *U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999), the Fourth Circuit held that when weighing the medical opinion evidence, an administrative law judge must look beyond the surface of the opinion and the status of its author and carefully assess the factors that affect the probative value of the opinion, *i.e.*, the physician's qualifications, the nature and quantity of the documentation underlying the opinion, the extent to which a physician has explained his conclusions, and the sophistication of the doctor's diagnoses. *See also Tedesco v. Director, OWCP,* 18 BLR 1-103 (1994). In the present case, the administrative law judge did not render such findings with respect to Dr. Harden's conclusion that "any chronic lung disease, such as pneumoconiosis, would have increased his risk of dying from pneumonia." Decision and Order at 14; Director's Exhibits 9, 10. This omission is significant, as the basis of Dr. Harden's opinion purportedly identifying pneumoconiosis as a contributing cause of the miner's death is not apparent. In addition, the administrative law judge's crediting of Dr. Harden's opinion under Section 718.205(c) (2000) conflicts with her finding, pursuant to Section 718.202(a)(4), that Dr. Harden's diagnosis of pneumoconiosis was entitled to little weight on the ground that it was not adequately documented. Decision and Order at 12.

The documentation regarding Dr. Harden's opinion consists of treatment notes, the death certificate dated April 4, 1999 and two brief letters prepared in May and August of 1999. Director's Exhibits 7-10. In the treatment notes, Dr. Harden did not diagnose pneumoconiosis or attribute any of the miner's pulmonary conditions to coal dust exposure nor did he refer to pneumoconiosis or coal dust exposure as a contributing or aggravating factor in the development of the miner's pulmonary problems and subsequent death. Director's Exhibit 8. When Dr. Harden prepared the death certificate, he cited methicillin resistant staphylococcus aureus (MRSA) pneumonia as the sole cause of death and cerebrovascular disease as the underlying cause of death. Director's Exhibit 7. In the first of the two 1999 letters, Dr. Harden indicated that pneumoconiosis was a coexistent disease and "a risk factor his recovering from any pneumonia." Director's Exhibit 9. In the second letter, Dr. Harden opined that the cause of death was MRSA pneumonia hastened by a stroke that would not allow the miner

cough, take deep breaths, or clear his secretions and that "[a]ny chronic lung disease, such as pneumoconiosis would have increased his risk of mortality and morbidity with pneumonia." Director's Exhibit 10. Neither letter contains references to any data supporting Dr. Harden's conclusion nor does it appear that Dr. Harden explicitly stated that pneumoconiosis actually hastened the miner's death.[6] 20 C.F.R. §718.205(c)(5) (2001); *see also Jarrell*, *supra*; *Shuff*, *supra*. We must, therefore, vacate the administrative law judge's finding that pneumoconiosis hastened the miner's death and remand the case to the administrative law judge for reconsideration of the medical opinions relevant to Section 718.205(c)(5) (2001) in accordance with the Fourth Circuit's holdings in *Akers*, *Hicks*, and *Jarrell*. If the administrative law judge again credits Dr. Harden's opinion regarding the cause of the miner's death on remand, she must reconcile this determination with her finding under Section 718.202(a)(4) (2000).

[6]The administrative law judge stated that Dr. Sherer's opinion, that chronic hypoxemia caused by pneumoconiosis contributed to the miner's strokes, bolstered Dr. Harden's alleged conclusion that pneumoconiosis played a role in the miner's death. Decision and Order at 14; Director's Exhibit 21. The administrative law judge also determined, however, that Dr Sherer's diagnosis of pneumoconiosis was not entitled to "significant weight" on the ground that Dr. Sherer did not provide any clinical or laboratory results to support his opinion. Decision and Order at 12.

Accordingly, the administrative law judge's Decision and Order Granting 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.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge