

BRB No. 05-0380 BLA

ANNA MAE VRANA )  
(Widow of JOSEPH F. VRANA) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 SHANNOPIN MINING COMPANY )  
 )  
 and )  
 )  
 INTERNATIONAL BUSINESS AND ) DATE ISSUED: 11/30/2005  
 MERCANTILE REASSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Respondent )  
 )  
 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 Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Anna Mae Vrana, Carmichaels, Pennsylvania, *pro se*.

Toni J. Minner (Thompson, Calkins & Sutter), Pittsburgh, Pennsylvania, for employer/carrier.

Before: SMITH, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant,<sup>1</sup> without the assistance of counsel, appeals the Decision and Order Denying Benefits (03-BLA-5351) of Administrative Law Judge Gerald M. Tierney 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). Claimant filed her survivor's claim on June 14, 2002. Director's Exhibit 3. The district director issued a Proposed Decision and Order denying benefits on February 7, 2001. Director's Exhibit 21. Claimant requested a hearing, which was held on May 14, 2004. The administrative law judge determined that the medical evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).<sup>2</sup> Accordingly, benefits were denied.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, are supported by substantial evidence, and are in accordance with 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).

Claimant wrote a statement in support of her appeal, alleging that the administrative law judge erred by not finding that the miner's death was due to pneumoconiosis. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

To establish entitlement to survivors' benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death,

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<sup>1</sup> Anna Mae Vrana is the surviving spouse of Joseph F. Vrana, the miner, who died on February 10, 2000. Director's Exhibit 8.

<sup>2</sup> In a post-hearing brief, employer stipulated that the miner worked 37 years in coal mine employment. The administrative law judge made no finding in his January 13, 2005 Decision and Order as to whether the evidence was sufficient to establish that the miner suffered from coal workers' pneumoconiosis pursuant to 20 C.F.R. §718.202(a). We note, however, that the physicians of record are in agreement that the miner had x-ray evidence for clinical pneumoconiosis. Director's Exhibits 11-13.

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 Section 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); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3rd Cir. 1989).<sup>3</sup>

After considering the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decision and Order must be vacated and the case remanded to the administrative law judge for further consideration of whether claimant established that pneumoconiosis hastened the miner's death pursuant to 20 C.F.R. §718.205(c).

The administrative law judge noted that the miner's death certificate and three medical opinions, prepared by Drs. Jaworski, Anderson, and Fino, addressed the cause of the miner's death. Director's Exhibits 8, 11, 12, 13; Decision and Order at 2. The death certificate dated February 15, 2000 did not mention pneumoconiosis and listed the cause of the miner's death as ventricular tachycardia, atrial fibrillation and ischemic cardiomyopathy. The administrative law judge noted that Dr. Jaworski and Dr. Anderson were of the opinion that pneumoconiosis, in the form of chronic obstructive pulmonary disease partially caused by coal dust exposure,<sup>4</sup> placed additional stress on the miner's heart and thereby contributed to the miner's death, while Dr. Fino took the opposing view that pneumoconiosis played no role whatsoever in the miner's death. Decision and Order at 2-5. In weighing these conflicting opinions, the administrative law judge found that Drs. Jaworski and Anderson made speculative statements regarding the mechanism of the miner's death, and whether the miner's chronic obstructive pulmonary disease, due in part to his coal mine employment, hastened his death. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Decision and Order at 5. The administrative law judge noted that Dr. Jaworski, in contrast to Dr. Fino, "did not cite precise objective evidence" to support his opinion that pneumoconiosis hastened the miner's death. Decision and Order at 5. The administrative law judge thus decided to assign greatest probative weight to Dr. Fino's opinion because

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<sup>3</sup> Because the miner last worked in the Commonwealth of Pennsylvania, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 1.

<sup>4</sup> Section 718.201(a)(2) provides in pertinent part that the definition of legal pneumoconiosis includes chronic restrictive or obstructive pulmonary disease arising out of coal mine employment. *See* 20 C.F.R. §718.201(a)(2).

he considered Dr. Fino's opinion, that the miner's' death was not hastened by clinical or legal pneumoconiosis, to be better supported by the objective evidence. *Id.*

We vacate the administrative law judge's denial of benefits, and his finding at 20 C.F.R. §718.205(c) because he failed to discuss in his Decision and Order, the miner's hospitalization records, contained at Director's Exhibits 10, 11, which pertain to the miner's cardiac history and medical treatment by both Drs. Jaworski and Anderson prior to his death.<sup>5</sup> These hospitalization records constitute relevant evidence to be considered in conjunction with the medical opinion evidence in determination of whether the miner's death was hastened by pneumoconiosis.

Under the Administrative Procedure Act (APA), the administrative law judge is required to address all relevant evidence of record, explain the rationale employed in the case and clearly indicate the specific statutory or regulatory provision pertaining to a particular finding. 5 U.S.C. §557 (c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).<sup>6</sup> Although the administrative law judge is empowered to weigh the evidence, because the administrative law judge's evidentiary analysis does not include a discussion of all of the relevant evidence of record, the basis for the administrative law judge's credibility determinations in this particular case cannot be affirmed. *See Fetterman v. Director, OWCP*, 7 BLR 1-688 (1985); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996 (1984); *see also Witt v. Dean Jones Coal Co.*, 7 BLR 1-21 (1984).

Furthermore, although the trier-of-fact has discretion to accord greater weight to a physician's opinion that he considers to be better supported by the objective evidence, *see King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985), the administrative law judge, in this instance, failed to outline in his Decision and Order what specific objective evidence of record corroborated or supported Dr. Fino's opinion. The administrative law judge also erred by not considering claimant's hearing testimony, in conjunction with the

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<sup>5</sup> The administrative law judge also failed to discuss the relevance, if any, of the October 30, 1995 medical report of Dr. Levine, who opined that the miner was totally disabled due to pneumoconiosis in conjunction with the miner's state claim for occupational disease. Director's Exhibit 11.

<sup>6</sup> The Administrative Procedure Act further requires each adjudicatory decision to include a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record..." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a).

medical evidence, to determine whether she satisfied her burden of proof to establish that the miner's death was hastened by pneumoconiosis. *See Soubik v. Director, OWCP*, 366 F.3d 226, 235, 23 BLR 2-82, 2-101 (3d Cir. 2004) (Roth, J., dissenting); *Hillibush v. U.S. Department of Labor*, 853 F.2d 197, 11 BLR 2-223 (3d Cir. 1988). We, therefore, vacate the administrative law judge's findings pursuant to 20 C.F.R. §718.205(c).

On remand, the administrative law judge is directed to consider all of the record evidence and claimant's hearing testimony relevant to the subsections at 20 C.F.R. §718.205(c)(1)-(5). *See* 20 C.F.R. §718.205(c). Because jurisdiction for this case arises within the United States Court of Appeals for the Third, we note that the opinions of Drs. Jaworski and Anderson, may be entitled to deference unless the administrative law judge provides "specific and persuasive reasons" for crediting Dr. Fino's opinion. *See Soubik*, 366 F.3d at 237, 23 BLR at 2-104. Consequently, the administrative law judge is instructed on remand to identify the specific objective evidence of record which supports Dr. Fino's opinion that pneumoconiosis did not hasten the miner's death. The administrative law judge is further directed to render his Decision and Order in compliance with the APA by addressing all of the relevant record evidence in his consideration of whether claimant satisfied her burden of proving her entitlement to benefits pursuant to 20 C.F.R. §718.205(c).

Accordingly, the Decision and Order – Denying Benefits is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge