BRB Nos. 09-0262 BLA
and 09-0655 BLA

HELEN L. COTTON (o/b/o and as Widow of CLIFFORD M. COTTON)	)	
Claimant-Petitioner	)	
v.	)	
KEY MINING, INCORPORATED	)	
and	)	
AMERICAN MINING INSURANCE COMPANY	)	DATE ISSUED: 11/16/2009
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 Request for Modification and the Decision and Order Denying Benefits of Paul C. Johnson, Jr., Administrative Law Judge, United States Department of Labor.

Helen L. Cotton, Oliver Springs, Tennessee, *pro se*.

Waseem A. Karim (Jackson Kelly PLLC), Lexington, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Request for Modification (06-BLA-6194) and the Decision and Order Denying Benefits (06-BLA-6193) of Administrative Law Judge Paul C. Johnson, Jr., rendered on a miner's subsequent claim and a survivor's claim, respectively, 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 thirty-six years and eleven months of qualifying coal mine employment, and determined that the miner's claim was subject to the provisions at 20 C.F.R. §§725.309(d) and 725.310. The administrative law judge found that the newly submitted autopsy evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), an element of entitlement previously adjudicated against the miner. Consequently, the administrative found that claimant had established a basis for modification of the prior denial pursuant to Section 725.310, and a change in an applicable condition of entitlement pursuant to Section 725.309(d). Considering the entire record, the administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), but insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, the administrative law judge denied modification in the miner's claim. Adjudicating the survivor's claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), but failed to establish that the miner's

[1] Claimant is the widow of the miner. The miner filed his first application for benefits with the Social Security Administration on October 19, 1970. This claim was transferred to the Department of Labor, and was denied on March 28, 1979. Director's Exhibit 1. The miner's second application, filed on October 7, 1991, was denied by Administrative Law Judge Christine McKenna, based on the miner's failure to establish the existence of pneumoconiosis and total respiratory disability, and the Board affirmed the denial of benefits. *Cotton v. Stoney Ridge Coal Co.*, BRB No. 97-0248 BLA (Oct. 23, 1997) (unpub.); Director's Exhibit 1. On April 13, 2001, the miner filed a third application for benefits. Director's Exhibit 3. After the district director denied benefits, the miner filed a petition for modification, accompanied by supporting evidence, on May 7, 2003. Director's Exhibit 29. The district director denied modification on September 19, 2003 and, pursuant to the miner's request, the claim was referred to the Office of Administrative Law Judges for a formal hearing. Director's Exhibit 31. The miner died on March 30, 2005, while his case was pending. Director's Exhibit 65. Claimant is pursuing the miner's claim on his behalf, and filed her own survivor's claim for benefits on August 22, 2005. Director's Exhibit 61. On June 17, 2008, Administrative Law Judge Paul C. Johnson, Jr., conducted a consolidated hearing on both claims, and subsequently issued separate decisions.

death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits in the survivor's claim.

On appeal, claimant generally challenges the administrative law judge's denial of benefits in both the miner's claim and the survivor's claim.[2] Employer responds, urging affirmance of the administrative law judge's denial of benefits in both claims. The Director, Office of Workers' Compensation Programs, is not participating in either appeal.[3]

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. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law.[4] 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).

[2] By order issued on September 1, 2009, the Board acknowledged that claimant filed an appeal of the administrative law judge's Decision and Order Denying Request for Modification in the deceased miner's claim, BRB No. 09-0655 BLA, and filed an appeal of the Decision and Order Denying Benefits in her survivor's claim, BRB No. 09-0262 BLA. Consequently, the Board consolidated the two appeals for decision purposes only.

[3] We affirm the administrative law judge's findings that the miner worked in qualifying coal mine employment for thirty-six years and eleven months; that the newly submitted evidence established a basis for modification pursuant to 20 C.F.R. §725.310 and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d) in the miner's claim; and that the evidence of record established the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a)(2) and 718.203(b) in both the miner's and survivor's claims, as these determinations are not adverse to claimant and are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order on Modification 4-5, 10, 12; Decision and Order at 8.

[4] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as the miner's last coal mine employment occurred in Tennessee. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 4.

THE MINER'S CLAIM

In order to establish entitlement to benefits in the miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis was totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

While the administrative law judge found that the miner suffered from pneumoconiosis arising out of coal mine employment at Sections 718.202(a), 718.203(b), he accurately determined that the record contains no evidence of complicated pneumoconiosis sufficient to invoke the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304, and found that the evidence of record was insufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(b)(2)(i)-(iv).

Relevant to Section 718.204(b)(2)(i), a review of the record reveals ten pulmonary function studies, of which eight produced non-qualifying results, one produced qualifying results, and one was not completed by the miner.[5] Director's Exhibits 1, 11, 12, 14, 17, 32. On July 10, 2003, Dr. Fino reviewed the qualifying pulmonary function study dated August 28, 2002, and opined that it was invalid due to evidence of an abrupt onset to exhalation, hesitancy and inconsistency in the expiratory flows, premature termination to exhalation before five seconds, lack of plateauing in the expiratory curves, lack of reproducibility in the expiratory curves, and lack of patient effort and cooperation. Director's Exhibit 37.

In summarizing the pulmonary function studies of record, the administrative law judge failed to list the May 3, 1995 study administered by Dr. Baker and the October 11, 2002 study administered by Dr. Justice, both of which produced non-qualifying values. Decision and Order on Modification at 12-13; Director's Exhibits 1, 32. In addition, the administrative law judge did not discuss Dr. Fino's invalidation of the qualifying August 28, 2002 pulmonary function study. Director's Exhibit 37. Nevertheless, as this evidence supports the administrative law judge's determination that the weight of the pulmonary function studies of record was insufficient to establish total disability at

[5] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

Section 718.204(b)(2)(i), we deem the administrative law judge's failure to address these exhibits to be harmless error. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). The administrative law judge reasonably accorded less weight to the sole qualifying pulmonary function study dated August 28, 2002, as he determined that the remaining pulmonary function studies of record demonstrated that the miner's comprehension and effort in performing the tests were "inconsistent at best."[6] *See Clayton v. Pyro Mining Co.*, 7 BLR 1-551, 1-556 (1984); Decision and Order on Modification at 13. The administrative law judge was further persuaded that the miner's performance during the tests was suboptimal based on the July 27, 2001 pulmonary function study administered by Dr. Hughes, who concluded that the values obtained were invalid because the miner, due to his Alzheimer's disease, was unable to fully comprehend the instructions that would enable him to adequately perform the test. *See Jeffries v. Director, OWCP*, 6 BLR 1-1013, 1-1014 (1984); Director's Exhibit 11. Hence, the administrative law judge, within a permissible exercise of his discretion, found that the sole qualifying pulmonary function study of August 28, 2002 was "a clear anomaly" when compared to the other pulmonary function studies of record administered before and after it. *See Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Crapp v. United States Steel Corp.*, 6 BLR 1-476 (1983); *see also Andruscavage v. Director, OWCP*, No. 93-3291 (3d Cir. Feb. 22, 1994) (unpub.); Decision and Order on Modification at 13; Director's Exhibit 14. The administrative law judge properly found that the more reliable pulmonary function studies of record produced non-qualifying values, and therefore, failed to demonstrate total respiratory disability. 20 C.F.R. §718.204(b)(2)(i); *see Winchester v. Director, OWCP*, 9 BLR 1-177 (1986); Decision and Order on Modification at 13. Because the administrative law judge's weighing of the pulmonary function studies is rational and supported by substantial evidence, we affirm his determination that the pulmonary function study evidence is insufficient to establish total respiratory disability under Section 718.204(b)(2)(i).

We also affirm the administrative law judge's finding that claimant failed to establish total disability pursuant to Section 718.204(b)(2)(ii), as the administrative law judge accurately determined that none of the arterial blood gas studies of record produced

[6] The pulmonary function studies performed on November 26, 1991, May 24, 1993, and July 17, 2003 reflected a "fair" rating for claimant's cooperation and tests performed on April 27, 1995, August 28, 2002, and October 11, 2002 reported a "good" rating for the miner's cooperation. Director's Exhibits 1, 11, 12, 14, 17. Dr. Baker did not rate the miner's cooperation and understanding for the three tests he administered on October 28, 1992, May 3, 1995 and April 4, 2001. Director's Exhibits 1, 12.

qualifying values.[7] Decision and Order on Modification at 13; Director's Exhibits 1, 11, 12, 17; *see Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); Decision and Order on Modification at 13. Similarly, we affirm the administrative law judge's determination that, because the record contains no evidence of cor pulmonale with right-sided congestive heart failure, claimant cannot establish total disability pursuant to Section 718.204(b)(2)(iii). *See Newell v. Freeman United Mining Co.*, 13 BLR 1-37, 1-39 (1989), *rev'd on other grounds*, 933 F.2d 510, 15 BLR 2-124 (7th Cir. 1991); Decision and Order on Modification at 12.

Relevant to Section 718.204(b)(2)(iv), the medical opinion evidence consists of the opinions of Drs. Bruton, Hudson, Dahhan, and Repsher, that the miner had the physiological capacity to continue his previous coal mine work from a respiratory standpoint, and the contrary opinion of Dr. Baker, that the miner did not possess the physiological capacity to return to his usual coal mine employment.[8] Director's Exhibits 1, 12, 17, 40.

In assessing the probative value of the medical opinions of record, the administrative law judge correctly found that Dr. Baker was the only physician to opine that the miner was disabled from a respiratory or pulmonary impairment in two reports dated October 28, 1992 and April 4, 2001. The administrative law judge reviewed Dr. Baker's October 28, 1992 report and properly found that Dr. Baker's assessment, that the miner "should have no further exposure to coal dust, rock dust, or similar noxious agents due to his coal workers' pneumoconiosis and bronchitis," was insufficient to establish total respiratory disability, as it was merely a recommendation that the miner not return to a dusty environment in order to preclude further exacerbation of his pneumoconiosis. Decision and Order on Modification at 19; Director's Exhibit 1. Since a medical opinion of the inadvisability of returning to coal mine employment because of pneumoconiosis is insufficient to demonstrate total respiratory disability, the administrative law judge permissibly discredited Dr. Baker's October 28, 1992 opinion on this basis. *See*

[7] In summarizing the blood gas studies of record, the administrative law judge did not list the May 3, 1995 study obtained by Dr. Baker. *See* Decision and Order on Modification at 13; Director's Exhibit 1. As this blood gas study produced non-qualifying values, however, the administrative law judge's failure to consider it constitutes harmless error. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[8] The administrative law judge correctly found that the July 27, 2001 pulmonary evaluation report of Dr. Hughes did not support a finding of total disability, since Dr. Hughes did not render an assessment as to whether the miner was disabled. Decision and Order on Modification at 19; Director's Exhibit 11.

Migliorini v. Director, OWCP, 898 F.2d 1292, 1296-1297, 13 BLR 2-418, 2-425 (7th Cir. 1990), *cert. denied*, 498 U.S. 958 (1990); *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988). The administrative law judge, within a permissible exercise of his discretion, also discounted Dr. Baker's opinion, that the miner "*may have* difficulty doing sustained manual labor, on an [eight] hour basis, even in a dust-free environment," on the grounds that it was equivocal, unsupported by its underlying documentation, and conclusory. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *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); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); Decision and Order on Modification at 19 [emphasis in original]; Director's Exhibit 1. Further, the administrative law judge determined that Dr. Baker's failure to address the miner's ability to do his actual coal mine job or similar work, by comparing the miner's pulmonary capacity with the exertional requirements of his usual coal mine employment, undermined the probative value of the physician's opinion. Decision and Order on Modification at 19; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000); *Cross Mountain Coal, Inc. v. Ward*, 93 F.3d 211, 219, 20 BLR 2-360, 2-374 (6th Cir. 1996). Next, the administrative law judge analyzed Dr. Baker's April 4, 2001 disability assessment[9] and, likewise, assigned little weight to this opinion because it contained the same deficiencies as did the October 28, 1992 opinion. The administrative law judge observed that Dr. Baker's April 4, 2001 opinion, that the miner was "100% occupationally disabled for work in the coal mining industry," was premised on the fact that the miner had pneumoconiosis and, therefore, should avoid further exposure to the offending agent. *See Migliorini*, 898 F.2d at 1296-1297, 13 BLR at 2-425; *Zimmerman*, 871 F.2d at 567, 12 BLR at 2-258; *Taylor*, 12 BLR at 1-87; Decision and Order on Modification at 20; Director's Exhibit 12. Further, the administrative law judge determined that Dr. Baker's disability assessment was based on the guidelines he used for purposes of Kentucky state black lung benefits, which are not the applicable standards for purposes of federal black lung benefits under the Act. As Dr. Baker's 2001 opinion was unsupported by the miner's diagnostic testing and did not address the miner's ability to do his actual coal mine job or similar work, the administrative law judge permissibly concluded that the opinion was not well reasoned and was entitled to little weight. *See Trumbo*, 17 BLR at 1-88; *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *see generally Gee v. W.G. Moore & Sons*, 9 BLR 1-4, 1-6 (1986) (*en banc*) (administrative law judge rejected doctor's opinion where doctor failed to term claimant totally disabled or to address

[9] Relying on the tables set forth in the *Guides to the Evaluation of Permanent Impairment*, 5th Edition, Dr. Baker stated that claimant has a "Class I impairment," which the tables list as equivalent to a 0% impairment, based on FEV_1 and vital capacity values that were greater than 80% of the predicted value. Director's Exhibit 12.

severity of the impairment in such a way as to permit administrative law judge to infer total disability); Decision and Order on Modification at 20. The administrative law judge acted within his discretion in finding that the contrary opinions of Drs. Bruton, Hudson, Dahhan, and Repsher, that the miner retained the physiological capacity to continue his usual coal mine employment from a respiratory standpoint and did not suffer from a pulmonary impairment, were well-reasoned, supported by the miner's relevant histories, physical examinations, and objective tests indicating an absence of impairment, and entitled to greater weight. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172-173, 21 BLR 2-34, 2-45-46 (4th Cir. 1997); *Zimmerman*, 871 F.2d at 567, 12 BLR at 2-258; *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Decision and Order on Modification at 19. As substantial evidence supports the administrative law judge's credibility determinations, we affirm his finding that the medical opinion evidence failed to demonstrate that the miner was totally disabled pursuant to Section 718.204(b)(2)(iv).[10]

After weighing the evidence relevant to Section 718.204(b)(2)(i)-(iv) together, the administrative law judge rationally found that the medical evidence of record failed to affirmatively establish total respiratory disability, *see Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (*en banc*), and that claimant's lay testimony could not alter his finding that total disability was not established. Decision and Order on Modification at 20; *see* 20 C.F.R. §718.204(d); *Daugherty v. Director, OWCP*, 843 F.2d 1390 (6th Cir. 1988); *Coleman v. Director, OWCP*, 829 F.2d 3, 10 BLR 2-287 (6th Cir. 1987). Accordingly, we affirm, as supported by substantial evidence, the administrative law judge's finding that total disability was not established pursuant to Section 718.204(b)(2), a requisite element of entitlement under Part 718, and his determination that entitlement to benefits is precluded in the miner's claim. *See* 20 C.F.R. §718.204(b)(2); *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

[10] A review of the record reveals a third report by Dr. Baker, dated May 3, 1995, that was not included in the administrative law judge's summary of the medical opinion evidence or in his analysis of the physicians' opinions. Director's Exhibit 1. In the May 3, 1995 report, Dr. Baker rendered the same opinion *verbatim* regarding the miner's total disability as that stated in his October 28, 1992 report. Director's Exhibit 1. Since Dr. Baker's conclusions in the two reports were identical, the administrative law judge's failure to consider Dr. Baker's May 3, 1995 opinion constitutes harmless error. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order on Modification at 19-20.

THE SURVIVOR'S CLAIM

In order to establish entitlement to survivor's 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, 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)-(3). 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); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

Relevant to Section 718.205(c), the record contains the miner's death certificate, the autopsy report of Dr. Beuerlein, and the medical opinions of Drs. Meece, Castle, Caffrey, Crouch, Oesterling, and Dahhan. The death certificate, dated March 30, 2005, was completed by Dr. Willett, who listed left lower lobe pneumonia and coal workers' pneumoconiosis as immediate causes of death, and Alzheimer's dementia as a significant condition.[11] Director's Exhibit 65. An autopsy limited to the miner's lungs was conducted by Dr. Beuerlein on March 30, 2005, who concluded that the immediate cause of death was acute bronchopneumonia, and stated, "In addition, the patient has changes consistent with the diagnosis of coal workers' pneumoconiosis." Director's Exhibit 67. In a report dated January 26, 2006, Dr. Meece, the miner's treating physician, opined, "I certainly feel like in my opinion that coal workers' pneumoconiosis did contribute to [the miner's] death." Director's Exhibit 74. On February 27, 2006, Dr. Meece stated that the miner developed Alzheimer's dementia over the course of the eight years he treated the miner, and that the miner died of pneumonia "which was complicated by his black lung disease." Director's Exhibit 77. After setting forth the findings contained in the miner's autopsy report, Dr. Meece concluded that "I feel [the miner] had significant coal miner's [sic] pneumoconiosis that would have been a contributing factor to his death with his pneumonia and his dementia." *Id.* Drs. Castle, Caffrey, Crouch, and Oesterling conducted independent reviews of the autopsy slides and, while each physician diagnosed

[11] When initially completing the death certificate, Dr. Willett refrained from recording the immediate cause of death because an autopsy was pending, but he identified Alzheimer's dementia as an underlying cause of death. Director's Exhibit 65. Subsequently, the autopsy was conducted and Dr. Willett amended the death certificate to list left lower lobe pneumonia and coal workers' pneumoconiosis as immediate causes of death and Alzheimer's dementia as a significant condition. *Ibid*.

the existence of pneumoconiosis, all four physicians opined that coal workers' pneumoconiosis did not cause, contribute to, or hasten the miner's death. Employer's Exhibits 1-3, 5-7, 9. After reviewing various medical records, Dr. Dahhan also opined that the miner's death was due to pneumonia and was not caused, contributed to, or hastened by the inhalation of coal dust or coal workers' pneumoconiosis. Employer's Exhibit 4.

In addressing the relevant evidence under Section 718.205(c), the administrative law judge, within a proper exercise of his discretion, found that the death certificate listing coal workers' pneumoconiosis as an immediate cause of death was, in and of itself, insufficient to establish death due to pneumoconiosis in the absence of any explanation for this conclusion provided by Dr. Willett, whose relationship to the miner was unknown. *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-262 (4th Cir. 2000); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Addison v. Director, OWCP*, 11 BLR 1-68, 1-70 (1988); Decision and Order at 10; Director's Exhibit 65. With respect to the opinion of Dr. Meece, the administrative law judge acknowledged that Dr. Meece was Board-certified in family practice and that he treated the miner for eight years prior to his demise, but nevertheless, found that Dr. Meece's opinion concerning the cause of death was not well-reasoned. In so finding, the administrative law judge concluded that it did not appear that Dr. Meece had personally diagnosed pneumoconiosis. Rather, Dr. Meece devoted his discussion primarily to Dr. Beuerlein's autopsy findings of pneumoconiosis, but did not provide any rationale to support his conclusion that pneumoconiosis was a contributing factor to the miner's death. *See Bradberry v. Director, OWCP*, 117 F.3d 1361, 21 BLR 2-166 (11th Cir. 1997); *Clark*, 12 BLR at 1-155 (1989); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Decision and Order at 10. Further, the administrative law judge found that Dr. Meece's opinion was undermined, based on his failure to explain how the miner's pneumoconiosis contributed to the bronchopneumonia that was the immediate cause of death. Accordingly, the administrative law judge rationally found that Dr. Meece's opinion was not well-reasoned and therefore was entitled to little weight, despite his status as the miner's treating physician. Decision and Order at 10; *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); *see generally Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-647-49 (6th Cir. 2003) (the opinions of treating physicians get the deference they deserve based on their power to persuade); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003) (administrative law judge as fact-finder should decide whether physician's report is sufficiently reasoned and documented); *Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-117 (6th Cir. 1995); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Trumbo*, 17 BLR at 1-88-89. Since the remaining evidence did not support a finding of death due to pneumoconiosis, the administrative law judge permissibly found that the record contained no credible and reasoned medical opinion that pneumoconiosis hastened the

miner's death.[12] Decision and Order at 10-11. As substantial evidence supports the administrative law judge's credibility determinations, we affirm his finding that claimant failed to meet her burden of establishing that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *See Williams*, 338 F.3d at 518, 22 BLR at 2-655. Consequently, we affirm the administrative law judge's finding that entitlement is precluded in the survivor's claim. *See* 20 C.F.R. §718.205(c); *Brown*, 996 F.2d at 816, 17 BLR at 2-140; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

Accordingly, the administrative law judge's Decision and Order Denying Request for Modification of the denial of benefits in the miner's claim, and his Decision and Order Denying Benefits in the survivor's claim, are affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge

[12] Dr. Beuerlein's autopsy report indicated that the immediate cause of death was bronchopneumonia, and stated: "In addition, the patient has changes consistent with the diagnosis of coal workers' pneumoconiosis." Director's Exhibit 67. This statement, however, is not tantamount to a conclusion that the miner's death was caused, contributed to, or hastened by pneumoconiosis, and therefore, it is insufficient to establish death due to pneumoconiosis under Section 718.205(c). *See* 20 C.F.R. §718.205(c); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).