BRB No. 09-0304 BLA

P.F. (Widow of D.F.) Claimant-Respondent v. HARMAN MINING COMPANY and OLD REPUBLIC INSURANCE COMPANY Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 10/26/2009 DECISION and ORDER

Appeal of the Decision and Order of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (06-BLA-5812) of Administrative Law Judge Pamela Lakes Wood (the administrative law judge) 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). The administrative law judge credited the miner with 18 years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence established the existence of both clinical and legal pneumoconiosis[1] arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (2), (4)[2] and 718.203(b). The administrative law judge also found that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the x-ray evidence established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1). Employer also challenges the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). Lastly, employer challenges the administrative law judge's finding that the evidence established that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Claimant[3] responds, urging affirmance of the administrative law judge's award of benefits.[4] The Director, Office of Workers' Compensation Programs, has

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[1] "Clinical pneumoconiosis" consists of those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment. 20 C.F.R. §718.201(a)(1).

"Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

[2] The administrative law judge found that the medical opinion evidence established both clinical and legal pneumoconiosis at 20 C.F.R. §718.202(a)(4).

[3] Claimant is the widow of the miner, who died on April 20, 2005. Director's Exhibit 9. She filed her survivor's claim on June 6, 2005. Director's Exhibit 2.

[4] Employer also filed a brief in reply to claimant's response brief, reiterating its prior contentions.

declined to file a brief in this appeal.[5]

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 applicable law.[6] 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).

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* 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). Because this survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).[7]

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[5] Because the administrative law judge's length of coal mine employment finding and her finding that the evidence established clinical pneumoconiosis at 20 C.F.R. §718.202(a)(2) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[6] The record indicates that the miner was employed in the coal mining industry in Virginia. Director's Exhibits 3, 4. Accordingly, the law of the United States Court of Appeals for the Fourth Circuit is applicable. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

[7] Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

> (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
> (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
> (3) Where the presumption set forth at §718.304 is applicable.
> (4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.
> (5) Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death.

See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence establishes, *inter alia*, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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); *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

Employer initially contends that the administrative law judge erred in finding that the x-ray evidence established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1). The record consists of the four interpretations of x-rays dated August 2, 1985, April 12, 1986, May 10, 1988, and September 29, 2000. Dr. Wiot, a B reader and a Board-certified radiologist, read the August 2, 1985 x-ray as negative for pneumoconiosis. Employer's Exhibit 6. Dr. DePonte, a B reader and a Board-certified radiologist, read the April 12, 1986 x-ray as positive for pneumoconiosis. Claimant's Exhibit 2. Dr. Castle, whose qualifications are not contained in the record, read the May 10, 1988 x-ray as negative for pneumoconiosis. Employer's Exhibit 5. Dr. Patel, a B reader and a Board-certified radiologist, read the September 29, 2000 x-ray as positive for pneumoconiosis. Claimant's Exhibit 1.

The administrative law judge noted that two x-ray readings were positive for pneumoconiosis and two x-ray readings were negative for the disease. The administrative law judge then determined that "the most recent x-ray interpretation was positive and two of the three interpretations by the most qualified, 'dually qualified readers' (who are [B]oard-certified in radiology and qualified as NIOSH B-readers) were positive for pneumoconiosis." Decision and Order at 14. Hence, the administrative law judge found that the weight of the x-ray evidence, on balance, was positive for clinical pneumoconiosis.

Employer argues that the administrative law judge's findings with respect to the x-ray evidence did not comply with the Administrative Procedure Act (APA). Specifically, employer asserts that the administrative law judge erred in failing to explain why she relied on the most recent x-ray evidence in this case. The 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), requires that an administrative law judge independently evaluate the evidence and provide an explanation for her findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). In this case, the administrative law judge stated that "[b]ecause pneumoconiosis is a progressive and irreversible disease, it may be appropriate to accord greater weight to the most recent evidence of record,

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20 C.F.R. §718.205(c).

especially where a significant amount of time separates newer evidence from that evidence which is older." Decision and Order at 13. Because a significant period of time separates Dr. Castle's negative reading of the x-ray taken on May 10, 1988 from Dr. Patel's positive reading of the x-ray taken on September 29, 2000, the administrative law judge reasonably accorded greater weight to Dr. Patel's positive reading of the September 29, 2000 x-ray because it was the most recent x-ray. *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992). Consequently, we reject employer's assertion that the administrative law judge erred in failing to explain why she relied on the most recent x-ray evidence in this case.

Employer also asserts that the administrative law judge erred in considering the qualifications of the readers of the x-rays. Employer maintains that "[the administrative law judge's] observation that two of the three readings by dually qualified doctors were positive for pneumoconiosis does not rescue [her] decision where, as here, the readings of each of the films – whether positive or negative – are uncontradicted." Employer's Brief at 14. Section 718.202(a)(1) requires that an administrative law judge resolve conflicts in x-ray readings by considering the radiological qualifications of the readers of the x-rays. 20 C.F.R. §718.202(a)(1). In this case, the administrative law judge stated that two of the three x-ray readings by the dually qualified radiologists were positive for pneumoconiosis. Decision and Order at 14. Thus, the administrative law judge reasonably accorded greater weight to the x-ray readings by physicians who are dually qualified as B readers and Board-certified radiologists. *Webber v. Peabody Coal Co*., 23 BLR 1-123 (2006)(*en banc*)(Boggs, J., concurring), *aff'd on recon.*, 24 BLR 1-1 (2007)(*en banc*). Consequently, we reject employer's assertion that the administrative law judge erred in considering the qualifications of the readers of the x-rays.

Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1).

Employer next contends that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge considered the reports of Drs. Perper, Rasmussen, Tuteur, and Endres-Bercher.[8] Dr. Perper opined that the miner had simple coal workers' pneumoconiosis, centrilobular emphysema related to coal dust exposure

[8] The administrative law judge also considered the hospital and treatment records and the death certificate signed by Dr. Butler, and found that they did not assist either claimant in establishing the existence of pneumoconiosis or employer in disproving the existence of the disease. Decision and Order at 16.

and smoking, and squamous cell carcinoma related to coal dust exposure and smoking. Claimant's Exhibit 7. Dr. Rasmussen opined that the miner had coal workers' pneumoconiosis and that cigarette smoking and coal mine dust exposure contributed to his impaired lung function. Claimant's Exhibit 8. Dr. Tuteur opined that the miner had minimal simple coal workers' pneumoconiosis and chronic obstructive pulmonary disease (COPD) manifested by chronic bronchitis and emphysema related to cigarette smoking, and not the inhalation of coal mine dust. Employer's Exhibit 2. Dr. Endres-Bercher opined that the miner did not have coal workers' pneumoconiosis. Employer's Exhibit 11. Further, although Dr. Endres-Bercher opined that the miner had chronic bronchitis, the doctor did not render an opinion regarding the cause of the disease. *Id*.

The administrative law judge found that claimant established the existence of clinical pneumoconiosis, based on the opinions of Drs. Perper and Tuteur. Decision and Order at 15. Regarding legal pneumoconiosis, the administrative law judge discounted Dr. Endres-Bercher's opinion because she found that it was too remote in time.[9] Decision and Order at 16. The administrative law judge also discounted Dr. Rasmussen's opinion because she found that it was based on an inaccurate smoking history.[10] *Id*. Further, the administrative law judge found that Dr. Perper's opinion was more persuasive than Dr. Tuteur's opinion because she found that Dr. Tuteur relied on an inflated smoking history and Dr. Tuteur's analysis was illogical. *Id*. Hence, the administrative law judge found that claimant established the existence of legal pneumoconiosis, based on Dr. Perper's opinion.

Employer argues that the administrative law judge erred in discounting Dr. Tuteur's opinion that the miner did not have a chronic lung disease related to coal dust exposure.[11] Specifically, employer asserts that substantial evidence does not support the

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[9] Employer does not challenge the administrative law judge's weighing of Dr. Endres-Bercher's opinion at Section 718.202(a)(4).

[10] Likewise, employer does not challenge the administrative law judge's weighing of Dr. Rasmussen's opinion at Section 718.202(a)(4).

[11] Employer also argues that "the [administrative law judge] erred in dismissing [the hospital and treatment records] as somehow not probative." Employer's Brief at 19. As previously noted, the administrative law judge found that the hospital and treatment records did not assist either claimant in establishing the existence of pneumoconiosis or employer in disproving the existence of the disease. In so finding, the administrative law judge stated: "[the hospital and treatment records] merely mention coal workers' pneumoconiosis by history and list chronic obstructive pulmonary disease [(COPD)] as a diagnosis without commenting upon its etiology. Likewise, the death certificate lists

administrative law judge's finding that Dr. Tuteur relied on an inflated smoking history. Employer maintains that the administrative law judge cited no evidence in the record to support her finding regarding the miner's smoking history. Employer also asserts that the administrative law judge's finding regarding the miner's smoking history is conclusory.

Contrary to employer's assertions, the administrative law judge reasonably found that Dr. Tuteur relied on an inaccurate smoking history. *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988). As the administrative law judge noted, Dr. Tuteur relied on a smoking history of up to two packs of cigarettes a day for 30 to 40 years.[12] The administrative law judge, however, found that the miner had a smoking history of one pack of cigarettes a day for 23 years. In so finding, the administrative law judge stated that "[t]he medical and other records and testimony are inconsistent in reporting the [m]iner's smoking history but can be reconciled if it is accepted that the amount [that] the [m]iner smoked varied over time."[13]

[COPD] and black lung, and attributes the COPD to the black lung, but it does so in a conclusory manner." Decision and Order at 16. Because the administrative law judge permissibly discredited the hospital and treatment records because they were not reasoned, *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*), we reject employer's assertion that the administrative law judge erred in discrediting the hospital and treatment records.

[12] In a report dated November 13, 2006, Dr. Tuteur noted that his prior report, dated March 27, 1988, related that the miner had a smoking history of approximately one-half of a pack a day for 10 years. Employer's Exhibit 2 at 2. Dr. Tuteur also noted that "[m]ost often subsequent reports indicate that [the miner] smoked up to two packages per day with estimates of up to eighty pack years." *Id*. Dr. Tuteur opined that "[c]learly, during life [the miner] had multisystems disease with many health problems related to the chronic inhalation of tobacco smoke at a rate of up to two packages per day." Employer's Exhibit 2 at 6. In a subsequent report, dated November 12, 2007, Dr. Tuteur stated, "consensus indicates that [the miner] smoked regularly up to two packages per day for thirty to forty years." Employer's Exhibit 4 at 1.

[13] In considering the evidence related to the miner's smoking history, the administrative law judge noted: "The autopsy report lists a sixty pack year history, but it is unclear how that figure was reached. (DX 11). Hospital records variously report his smoking at two packs daily for 35 to 40 years (in December 2004), one to two packs daily for 35 years (also in December 2004), one-half pack daily for thirty years (in 2001), and one pack daily for an unspecified period (in 1998). (DX 12). The [m]iner testified at the April 1988 hearing before [Administrative Law Judge Giles J. McCarthy] that he began smoking at age 14 or 15 [*i.e.*, 1961 or 1962] and smoked four to five cigarettes

Decision and Order at 5.

After noting that Administrative Law Judge Clement J. Kichuk had previously found that the miner had a smoking history of one pack of cigarettes a day for six years before he quit smoking in 1987, the administrative law judge found that there was no reason to disturb it.[14] The administrative law judge additionally found that the miner smoked approximately one pack of cigarettes a day for 17 years from 1988 to 2005, as the medical records and claimant's 2007 hearing testimony indicated that the miner resumed smoking in April 1988 at an increased rate of between one-half pack and two packs of cigarettes a day until his death in April 2005. The administrative law judge then added the six pack-year smoking history for the period from 1961 or 1962 to 1988 to the 17 pack-year smoking history for the period from 1988 to 2005.

Because the administrative law judge reasonably found that the miner had a 23 pack-year smoking history based on both of these periods, *Wojtowicz*, 12 BLR at 1-168, we reject employer's assertion that the administrative law judge's finding regarding the miner's smoking history was conclusory. Further, because the administrative law judge reasonably found that Dr. Tuteur's reliance on a smoking history of up to two packs of cigarettes a day for 30 or 40 years significantly exceeded her finding that the miner had a 23 pack-year smoking history, *Trumbo*, 17 BLR at 1-89; *Bobick*, 13 BLR at 1-54, we reject employer's assertion that the administrative law judge erred in finding that Dr. Tuteur relied on an inflated smoking history. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

Employer also argues that the administrative law judge impermissibly substituted her opinion for that of Dr. Tuteur. In his November 12, 2007 report, Dr. Tuteur addressed the issue of legal pneumoconiosis. Dr. Tuteur specifically stated:

> Since 20% or so of never mining men who smoked in a similar fashion to [the miner] will develop clinically significant [COPD] and only 1% or so of never smoking coal miners develop the condition, in [the miner], with reasonable medical certainty, his [COPD] only mildly severe

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daily (one-quarter-pack or less) until giving it up in early 1987, and Judge McCarthy found him to be credible in discussing his smoking history." Decision and Order at 5.

[14] The administrative law judge noted that Administrative Law Judge Clement J. Kichuk gave deference to Judge McCarthy's determination that the miner's testimony regarding his smoking history was credible. Decision and Order at 5.

> physiologically, was due to the inhalation of cigarette smoke, not coal mine dust.

Employer's Exhibit 4 at 6, 7.

The administrative law judge found that the analysis for Dr. Tuteur's opinion that the miner's COPD was entirely due to smoking was illogical. In considering Dr. Tuteur's opinion, the administrative law judge stated:

> Significantly, Dr. Tuteur relied upon one or more epidemiological studies showing that 1% of nonsmoking miners develop clinically significant COPD while 20% of nonmining smokers develop it to conclude that COPD was not caused in whole or in part by coal mine dust exposure. That is illogical, however – assuming the accuracy and applicability of the data he has reported, it cannot be used to rule out coal mine dust as a cause, and the issue is not which factor played a greater role but, rather, whether the COPD was significantly related to or substantially aggravated by coal mine dust exposure. Thus, while a significantly greater portion of the [m]iner's COPD may be attributable to cigarette smoking than would be attributable to occupational exposure in the coal mines, that is not the same as saying that the COPD is entirely due to smoking.

Decision and Order at 15-16 (footnote omitted).

Although it is within the administrative law judge's discretion, as the trier-of-fact, to determine the weight and credibility to be accorded the medical experts, *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984), and to assess the evidence of record and draw her own conclusions and inferences from it, *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986), the interpretation of medical data is for the medical experts, *Marcum v. Director,* OWCP, 11 BLR 1-23 (1987). In this case, the administrative law judge did not discount Dr. Tuteur's opinion because Dr. Tuteur failed to explain how the epidemiological studies supported his opinion. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*). Rather, the administrative law judge discounted Dr. Tuteur's opinion because she found that it was illogical for Dr. Tuteur to conclude that the miner's COPD was not caused by coal mine dust exposure based on her consideration of the epidemiological studies. Thus, to the extent that the administrative law judge discounted Dr. Tuteur's opinion on the ground that it was based on an illogical interpretation of the epidemiological studies and failed to explain why the doctor's conclusion was an illogical interpretation of the

studies, she impermissibly discounted Dr. Tuteur's opinion because it did not comply with her own medical conclusion. *Hall v. Consolidation Coal Co.*, 6 BLR 1-1306 (1984).

Employer additionally argues that substantial evidence does not support the administrative law judge's finding that Dr. Perper's opinion outweighed Dr. Tuteur's contrary opinion. Specifically, employer asserts that the administrative law judge erred in failing to explain why she accorded greater weight to Dr. Perper's opinion. Employer maintains that the administrative law judge did not satisfy the requirements of the APA.

Dr. Perper opined that the miner had legal pneumoconiosis, Claimant's Exhibit 7, while Dr. Tuteur opined that the miner did not have legal pneumoconiosis, Employer's Exhibits 2, 4. In considering the opinions of Drs. Perper and Tuteur, the administrative law judge stated, "[o]n the issue of legal pneumoconiosis, I find Dr. Perper's analysis to be more persuasive because, as discussed above, Dr. Tuteur's analysis is illogical." Decision and Order at 16. However, as discussed, *supra*, the administrative law judge impermissibly discounted Dr. Tuteur's opinion because it was based on an illogical interpretation of the epidemiological studies. *Hall*, 6 BLR at 1-1309. Thus, the administrative law judge did not provide an adequate explanation for her finding that Dr. Perper's opinion was more persuasive than Dr. Tuteur's contrary opinion. *Wojtowicz*, 12 BLR at 1-168. Consequently, the administrative law judge erred in failing to provide a valid basis for her finding that Dr. Perper's opinion outweighed Dr. Tuteur's contrary opinion.

In view of the foregoing, we vacate the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) and remand the case for further consideration of the evidence in accordance with the requirements of APA.

On remand, the administrative law judge must weigh all of the evidence together at 20 C.F.R. §718.202(a)(1)-(4) to determine whether the evidence establishes the existence of pneumoconiosis at 20 C.F.R. §718.202(a). *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-174 (4th Cir. 2000).

Finally, employer contends that the administrative law judge erred in finding that the evidence established that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). The administrative law judge considered the death certificate completed by Dr. Butler and the reports by Drs. Perper, Crouch, Tuteur, and Adelson. In the death certificate, Dr. Butler listed Cryptococcal pneumonia as the immediate cause of the miner's death. Director's Exhibit 9. Dr. Butler also listed COPD and black lung as underlying causes of the miner's death. *Id.* In his report, Dr. Perper opined that "[the miner's] coal workers' pneumoconiosis was a contribut[ing] cause of death and a hastening factor in death both directly through direct pulmonary involvement and

indirectly through the emphysema, pulmonary cancer and reduction of immune body defenses favoring pulmonary infections."[15] Claimant's Exhibit 7. By contrast, in her March 20, 2006 autopsy report, Dr. Crouch opined that occupational coal dust exposure could not have caused, contributed to, or otherwise hastened the miner's death. Employer's Exhibit 1. Dr. Crouch also opined that the miner's death was attributed to fungal pneumonia that was unrelated to dust exposure. *Id*. Similarly, in his November 13, 2006 report, Dr. Tuteur opined that the miner's very minimal simple coal workers' pneumoconiosis was of insufficient severity and profusion to in any way contribute to his clinical course or hasten his death. Employer's Exhibit 2. Dr. Tuteur also opined that the miner's lung carcinoma was unrelated to the inhalation of coal mine dust and played no role in his death. *Id*. In his subsequent November 12, 2007 report, Dr. Tuteur opined that "[n]either the inhalation of coal mine dust, nor the development of coal workers' pneumoconiosis or any other coal mine dust related disease process played any role in causing [the miner's] death, influencing his death, or hastening his death." Employer's Exhibit 4. Dr. Tuteur opined that several health problems resulting in necrotizing fungal pneumonia caused the miner's death. *Id*. In his autopsy report, Dr. Adelson found fungal pneumonia, emphysematous change, simple coal workers' pneumoconiosis and squamous carcinoma, and opined that the cause of the miner's death was respiratory insufficiency secondary to severe Cryptococcal pneumonia. Director's Exhibit 10.

The administrative law judge initially discounted the death certificate because she found that it was conclusory in nature. Decision and Order at 18. The administrative law judge next found that the medical records and the summary of the terminal hospital records do not provide a basis for assessing the possible contribution of pneumoconiosis to the miner's death. *Id*. The administrative law judge then found that "[w]hile [Dr. Adelson] diagnosed both simple (uncomplicated) coal workers' pneumoconiosis and emphysematous change, he did not comment upon whether either condition acted as a contributing or hastening factor." *Id*. Further, the administrative law judge gave greater weight to Dr. Perper's opinion than to the contrary opinions of Drs. Crouch and Tuteur because she found that Dr. Perper's opinion was better reasoned and documented. *Id*. at 19. In addition, the administrative law judge gave greater weight to Dr. Perper's opinion based on Dr. Perper's superior qualifications. *Id*. The administrative law judge therefore found that claimant established that the miner's death was due to pneumoconiosis.

Because we vacate the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), we also vacate the administrative law judge's finding that the evidence established that

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[15] As previously noted, Dr. Perper also opined, "[a]s to the etiology of the cancer it is as the emphysema, due both to chronic exposure to tobacco smoke and chronic exposure to airborne coal dust and coal workers' pneumoconiosis." Claimant's Exhibit 7.

the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)[16] and remand the case for further consideration of all the evidence in accordance with the requirements of the APA, if reached.

On remand, when considering the medical opinion evidence, the administrative law judge should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their opinions. *See generally 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).

[16] At Section 718.205(c), the administrative law judge found that "the [m]iner's clinical and legal pneumoconiosis contributed to and hastened his death by affecting his breathing, thereby directly contributing to his respiratory death, and by making him more susceptible to the pneumonia that was the major force leading to his death." Decision and Order at 19. Thus, on remand, the administrative law judge must reconsider the relevant medical evidence and determine whether the miner's death was due to either clinical or legal pneumoconiosis, in accordance with the requirements of the Administrative Procedure Act. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

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

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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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BETTY JEAN HALL
Administrative Appeals Judge