

BRB No. 00-0997 BLA

MARY LOUISE ZEGLIN)
(Widow of WALTER J. ZEGLIN))
)
 Claimant-Respondent)
)
 v.)
)
 ISLAND CREEK COAL COMPANY) DATE ISSUED:
)
 and)
)
 CONSOLIDATED ENERGY,)
 INCORPORATED)
)
 Employer/Carrier-)
 Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and the Decision and Order on Reconsideration Awarding Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

William S. Mattingly and Kathy L. Snyder (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer and carrier.

Barry H. Joyner (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: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order and the Decision and Order on Reconsideration (99-BLA-1366) of Administrative Law Judge Richard A. Morgan 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

¹The 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 (2001). 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*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

administrative law judge accepted the stipulation of the parties that the miner engaged in at least twenty-one years of qualifying coal mine employment and had pneumoconiosis arising out of coal mine employment. The administrative law judge then found that the evidence was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2) (2000) under the standard enunciated in *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989), by the United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises. Accordingly, benefits were awarded.

In the present appeal, employer challenges the administrative law judge's findings pursuant to Section 718.205(c)(2) (2000). Claimant, the miner's widow, responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has declined to submit a brief on the merits of this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

Employer contends that the administrative law judge erred in finding that the weight of the medical opinions of record established that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(2) (2000). Specifically, employer maintains that the administrative law judge inadequately analyzed the conflicting medical opinions of record and failed to resolve all material conflicts in the evidence. Some of employer's arguments have merit.

In finding that pneumoconiosis was a substantially contributing cause of the miner's death, the administrative law judge accurately summarized the relevant evidence of record and the qualifications of the physicians, and determined that the miner died due to a combination of respiratory and cardiac problems. Decision and Order at 7-26, 36. The administrative law judge credited the opinion of Dr. Perper, that the miner suffered from both clinical pneumoconiosis and legal pneumoconiosis in the form of emphysema and/or chronic obstructive pulmonary disease (COPD)² arising out of coal mine employment,³ which

²We reject employer's argument that, since the miner's pulmonary function studies demonstrated that he had no lifetime airflow obstruction or ventilatory abnormality, substantial evidence does not support a finding of COPD or emphysema of sufficient severity

together caused hypoxemia and led to the development of pulmonary hypertension and cor pulmonale, thereby hastening the miner's death. Decision and Order at 31-33. The administrative law judge found that Dr. Perper's opinion was well reasoned, persuasively explained, and supported by the autopsy evidence, the miner's lifetime records, and the opinions of Drs. Schaaf,⁴ Ashcraft, Rizkalla and Caroff.⁵ *Id.* Inasmuch as Drs. Naeye,

to hasten death. The administrative law judge determined that, while the physicians agreed that emphysema generally produces an obstructive defect and that the miner's pulmonary function studies showed that he had no obstructive respiratory impairment, Drs. Schaaf, Ashcraft, Rizkalla and Perper explained that the miner's pneumoconiosis and emphysema/COPD produced hypoxemia as demonstrated by his blood gas studies, which measure different respiratory functions and showed that the miner had a reduced ability to oxygenate his blood. *See generally Whitaker v. Director, OWCP*, 6 BLR 1-983 (1984).

³Although employer correctly maintains that Dr. Oesterling opined that the miner's centrilobular emphysema was not related to dust exposure in coal mine employment, Employer's Exhibit 4 at 41-42, the administrative law judge accurately determined that Dr. Oesterling did not fully explain the etiology of the miner's emphysema but agreed that smoking was not its exclusive cause. Decision and Order at 30; Employer's Exhibit 4 at 40, 42. The administrative law judge reasonably concluded that the weight of the evidence established that dust exposure was a contributory cause of the miner's emphysema and/or COPD, based on the opinions of Drs. Schaaf, Ashcraft and Perper, Dr. Rizkalla's notation on autopsy of no smoking related damage to the miner's lungs, Dr. Caroff's observations over a 15-year period, and because the physicians of record consistently reported a minimal smoking history which did not substantially contribute to the miner's pulmonary problems. Decision and Order at 30-32.

⁴In his Decision and Order on Reconsideration, the administrative law judge discounted Dr. Schaaf's opinion, based on the physician's conflicting deposition testimony that the normal spirometry without evidence of airflow obstruction confirmed that the miner did not have COPD. Decision and Order on Reconsideration at 2; Director's Exhibit 34 at 62. Employer argues on appeal that the administrative law judge improperly discounted Dr. Schaaf's opinion rather than aligning it with the opinions of the physicians who found no pulmonary impairment attributable to coal mine employment. Contrary to employer's arguments, however, Dr. Schaaf consistently opined that the miner had pneumoconiosis and emphysema arising out of coal mine employment, which caused hypoxemia and led to the miner's death. Director's Exhibits 14, 27, 34 at 38-42, 61.

⁵We agree with employer's argument that Dr. Caroff's conclusions regarding the cause of the miner's death do not constitute a reasoned opinion, because Dr. Caroff did not explain why he listed pneumoconiosis and COPD among the causes of death on the miner's

Kleinerman and Caffrey diagnosed emphysema but failed to address its etiology or the role that it played in the miner's death,⁶ and Dr. Fino did not address whether the miner had COPD or emphysema, the administrative law judge acted within his discretion in finding that the evidence of record established that the miner's emphysema and/or COPD constituted legal pneumoconiosis as defined at 20 C.F.R. §718.201 (2000), and thus that the opinions of Drs. Naeye, Kleinerman, Caffrey and Fino, that the miner's death was unrelated to pneumoconiosis, were entitled to little weight.⁷ Decision and Order at 30-32; *see* 20 C.F.R.

death certificate. *See Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). The administrative law judge, however, merely credited Dr. Caroff's opinion to support his finding that the miner had pneumoconiosis and emphysema/COPD arising out of coal mine employment, as the administrative law judge determined that Dr. Caroff had a thorough understanding of the miner's condition in his capacity as the miner's treating physician over a period of 15 years; Dr. Caroff attended to the miner over his terminal admission and signed his death certificate; and the physician attributed the miner's COPD to a combination of coal dust exposure and smoking. Decision and Order at 31-32; Director's Exhibits 5, 17, 23, 27; *see Onderko v. Director, OWCP*, 14 BLR 1-2 (1989).

⁶The administrative law judge determined that Dr. Naeye diagnosed moderately severe centrilobular emphysema, with focal emphysema constituting 5% of the total emphysema, but did not address the etiology of the emphysema or the effect it had on the miner's death. Decision and Order at 7, 30; Director's Exhibit 7. Similarly, the administrative law judge found that while Dr. Kleinerman diagnosed mild to moderate centriacinar emphysema, he failed to adequately address the emphysema as legal pneumoconiosis and as a possible cause of death. Decision and Order at 10, 30-31; Director's Exhibits 25, 35. The administrative law judge permissibly accorded little weight to Dr. Caffrey's opinion that if the miner had COPD it was due to smoking, as the administrative law judge found that the miner had a minimal smoking history which the majority of physicians agreed would not have solely caused the miner's pulmonary problems. Decision and Order at 13-14, 31; Director's Exhibit 26; *see generally Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986). Further, although Dr. Caffrey diagnosed focal and centriacinar emphysema, he did not address its etiology or consider the degree to which it may have contributed to the miner's death. Decision and Order at 31; Director's Exhibit 26. The administrative law judge determined that Dr. Fino did not address whether the miner had COPD or emphysema and whether either condition contributed to the miner's death. Decision and Order at 17, 31; Decision and Order on Reconsideration at 2; Employer's Exhibit 1.

⁷Contrary to employer's arguments, the administrative law judge properly found that Dr. Auger's opinion was not relevant to a determination of the cause of the miner's death, as Dr. Auger merely evaluated the miner for the purpose of assessing his candidacy for pulmonary thromboendarterectomy; although Dr. Auger attributed the miner's pulmonary

§§718.201, 718.204(c)(2) (2001); *Lukosevicz, supra*. The administrative law judge's findings regarding the existence of legal pneumoconiosis, and his consequent discounting of the opinions of Drs. Naeye, Kleinerman, Caffrey and Fino, are supported by substantial evidence and are affirmed. We, therefore, need not address employer's arguments regarding the administrative law judge's alternative bases for according diminished weight to the opinions of Drs. Naeye, Kleinerman, Caffrey and Fino. We agree, however, with employer's argument that the administrative law judge failed to explain why he did not credit Dr. Oesterling's opinion that the miner's pneumoconiosis and emphysema did not cause, contribute to or hasten his death.⁸ As the administrative law judge may not reject relevant evidence without explanation, we vacate the administrative law judge's award of benefits, and remand this case for the administrative law judge to reevaluate Dr. Oesterling's opinion, accord it appropriate weight relative to the contrary probative evidence of record, and explain his credibility determinations pursuant to Section 718.205(c)(2) (2001).

Accordingly, the administrative law judge's Decision and Order and Decision and Order on Reconsideration awarding benefits are affirmed in part and vacated in part, and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

hypertension to thromboembolic disease, he did not address the miner's pneumoconiosis/emphysema and any possible contribution therefrom. Decision and Order at 24-25; Decision and Order on Reconsideration at 2; Director's Exhibits 23, 24.

⁸The administrative law judge noted that Dr. Oesterling agreed, that if pneumoconiosis and emphysema were of a sufficient magnitude, they could have contributed to the miner's death. Decision and Order at 30; Employer's Exhibit 4 at 50. Employer correctly maintains, however, that Dr. Oesterling did not feel that the miner's pneumoconiosis or centrilobular emphysema were in any way contributory to the miner's death, which the physician attributed to cardiac disease unrelated to coal mine dust exposure. Employer's Exhibit 4 at 36-37, 42, 53. Dr. Oesterling explained that, while the autopsy and lifetime medical records demonstrated right-sided congestive heart failure, the miner did not have classic cor pulmonale, *i.e.*, unilateral enlargement of the right side of the heart due to extensive pulmonary disease resulting in fibrosis around the pulmonary vessels, which restricts blood flow into the lungs; rather, the miner's right heart changes were due to vascular disease, resulting in generalized cardiomegaly unrelated to coal dust exposure. Employer's Exhibit 4 at 20, 22, 36-37, 49, 53. Dr. Oesterling additionally attributed the miner's pulmonary hypertension solely to pulmonary emboli. Employer's Exhibit 4 at 29, 47, 53.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge