BRB No. 04-0907 BLA

GEORGIA BROWN (Widow of JAMES BROWN) Claimant-Respondent v. HORN CONSTRUCTION COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 09/29/2005 DECISION and ORDER

Appeal of the Decision and Order of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

H. Ashby Dickerson (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (03-BLA-6263) of Administrative Law Judge Thomas M. Burke 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 thirty-two years of coal mine employment based on the parties' stipulation and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. Although the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3), he found the evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). The administrative law judge also found the evidence sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20

C.F.R. §718.205(c)(2). Accordingly, the administrative law judge awarded benefits on the survivor's claim.

On appeal, employer challenges the administrative law judge's finding that the evidence is sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4). Employer also challenges the administrative law judge's finding that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c)(2). Neither claimant[1] nor the Director, Office of Worker's Compensation Programs, has participated in this appeal.[2]

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on a survivor's claim filed on or after January 1, 1982 only when the miner's death was due to pneumoconiosis.[3] *See* 20 C.F.R. §§718.1, 718.205(c);

---

[1]Claimant is the widow of the miner, James Brown. The miner filed a claim for benefits with the Social Security Administration (SSA) on January 28, 1973. Director's Exhibit 1. This claim was denied by the SSA on November 29, 1973 and June 15, 1979, and by the district director on June 2, 1980 because the miner failed to establish the existence of pneumoconiosis and total disability. *Id.* Because the miner did not pursue this claim any further, the denial became final. The miner filed another claim for benefits with the Department of Labor on July 16, 1993. Director's Exhibit 2. On July 1, 1994, the district director awarded benefits in the miner's claim. *Id.* The miner died on January 23, 2002. Director's Exhibits 3, 8. Claimant filed a survivor's claim for benefits on April 8, 2002. Director's Exhibit 4.

[2]Since the administrative law judge's length of coal mine employment finding and his findings at 20 C.F.R. §718.202(a)(2) and (a)(3) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[3]Section 718.205(c) provides, in pertinent part, 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

Neeley v. Director, OWCP, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). However, before any finding of entitlement can be made in a survivor's claim, a claimant must establish the existence of pneumoconiosis. *See* 20 C.F.R. §718.202(a)(1)-(4); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A claimant must also establish that the miner's pneumoconiosis arose out of coal mine employment. *See* 20 C.F.R. §718.203; *Boyd*, 11 BLR at 1-40-41.

Employer initially contends that the administrative law judge erred in finding the x-ray evidence sufficient to establish the existence of pneumoconiosis at 20 C.F.R §718.202(a)(1). The record consists of thirteen interpretations of eight x-rays dated October 10, 1973, January 15, 1985, August 9, 1993, January 11, 2002, January 12, 2002, January 14, 2002, January 16, 2002, and January 23, 2002. The administrative law judge determined that the six readings of the January 11, 2002 through January 23, 2002 x-rays are not probative at 20 C.F.R. §718.202(a)(1) because they focused on the miner's lung cancer, rather than the presence or absence of pneumoconiosis. Decision and Order at 6. In considering these x-rays, the administrative law judge specifically stated:

> The most recent series of studies of record, dated January 11 through January 23, 2002, were taken during the miner's terminal hospitalization for metastasized lung cancer. It is reasonable to assume that the physicians interpreting the studies were not focusing on whether the miner suffered from pneumoconiosis; rather, they were assessing the effects of the miner's lung cancer. *Sacolick v. Rushton Mining Co.*, 6 B.L.R. 1-930 (1984) (studies conducted for purposes of diagnosing cancer not probative for determining presence or absence of pneumoconiosis). None of the interpretations of these studies contain (sic) a specific category reading for pneumoconiosis. As a result, the studies are not considered to be probative of the existence or absence of pneumoconiosis.

Id. at 6.

Of the remaining seven x-ray interpretations of three x-rays dated October 10, 1973, January 15, 1985, and August 9, 1993, four readings are positive for

---

> (3) Where the presumption set forth at §718.304 is applicable.
>
> ...
>
> (5) 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).

pneumoconiosis and three readings are negative for pneumoconiosis. A physician, whose signature is illegible, read the October 10, 1973 x-ray as negative for pneumoconiosis. Director's Exhibit 1. The record does not contain this physician's radiological credentials. Dr. Bassali, a dually qualified B reader and Board-certified radiologist, read the January 15, 1985 x-ray as positive for pneumoconiosis. Director's Exhibit 2. Drs. Gaziano, Milner, and Shahan read the August 9, 1993 x-ray as positive for pneumoconiosis, Director's Exhibit 2, while Drs. Fino and Scatarige read the same x-ray as negative for pneumoconiosis, Director's Exhibit 31; Employer's Exhibit 2. Although Dr. Shahan is a Board-certified radiologist and Drs. Fino and Gaziano are B readers, Dr. Scatarige is dually qualified as a B reader and a Board-certified radiologist. The record does not contain the radiological credentials of Dr. Milner. Based on the administrative law judge's finding that the relevant x-ray readings are predominantly positive for pneumoconiosis, he concluded that claimant satisfied her burden of proof at 20 C.F.R. §718.202(a)(1).

Employer asserts that the administrative law judge erred in discounting Dr. Scatarige's negative reading of the August 9, 1993 x-ray because he did not provide a specific category reading of this x-ray. In considering the relevant x-ray evidence, the administrative law judge stated:

> A subsequent study dated August 9, 1993 was interpreted as positive by a [B]oard-certified radiologist [Dr. Shahan], a B-reader [Dr. Gaziano], and a physician of unknown qualifications [Dr. Milner]. One B-reader [Dr. Fino] concluded that the study revealed Category O pneumoconiosis and one dually-qualified physician [Dr. Scatarige] did not provide a specific category reading, but noted scattered nodules, minimal fibrosis or discoid atelectoisis, and chronic obstructive pulmonary disease or "deep breath." The undersigned finds the specific Category 1 interpretations of a B-reader [Dr. Gaziano] and a [B]oard-certified radiologist [Dr. Shahan] outweigh the Category O reading of a B-reader [Dr. Fino] and the less specific interpretation of a dually-qualified physician [Dr. Scatarige]. On balance, this study demonstrates the presence of pneumoconiosis.

Decision and Order at 6.

On an ILO classification form dated September 24, 2003, Dr. Scatarige noted his interpretation of the August 9, 1993 x-ray. Director's Exhibit 31. Dr. Scatarige checked the box marked "NO" in section 2A in response to the question, "[are there] ANY parenchymal abnormalities consistent with pneumoconiosis?" *Id.* Next, Dr. Scatarige checked the box marked "NO" in section 3A in response to the question, "[are there] Any pleural abnormalities consistent with pneumoconiosis?" *Id.* Then Dr. Scatarige checked the box marked "YES" in section 4A in response to the question, "[are there] ANY other

abnormalities?" *Id*. Lastly, Dr. Scatarige checked the box marked "OD" for "other disease" in section 4B and noted scattered nodules, minimal fibrosis or discoid atelectasis and hyperinflation lungs in section 4C. *Id*.

Section 2B of the ILO classification form provides for the classification of small opacities while section 2C provides for the classification of large opacities. However, the form directs physicians to proceed to section 3 if the box marked "NO" is checked in section 2A.[4] *Id*. Hence, the form does not require physicians to classify opacities if they determine that there are not any parenchymal or pleural abnormalities consistent with pneumoconiosis.

Section 718.102(b) provides that a chest x-ray shall be classified according to the ILO classification system in order for it to establish the existence of pneumoconiosis. 20 C.F.R. §718.102(b). However, Section 718.102(b) does not require ILO classification of a chest x-ray to establish the absence of pneumoconiosis. *Id*. Rather, the pertinent regulation merely notes that "[a] chest X-ray classified under any of the foregoing classifications as Category 0, including sub-categories 0-, 0/0, or 0/1 under the UICC/Cincinnati (1968) Classification or the ILO-U/C 1971 Classification does not constitute evidence of pneumoconiosis." 20 C.F.R. §718.102(b).

In interpreting the August 9, 1993 x-ray, Dr. Scatarige determined that there are not any parenchymal or pleural abnormalities consistent with pneumoconiosis. Director's Exhibit 31. Consequently, Dr. Scatarige was not required to classify this x-ray reading according to the ILO classification system to establish the absence of pneumoconiosis. Therefore, it was error for the administrative law judge to discount Dr. Scatarige's negative reading of the August 9, 1993 x-ray because he did not provide a specific category reading of this x-ray. Consequently, we vacate the administrative law judge's finding that the x-ray evidence is sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and remand the case for further consideration of the evidence.[5]

---

[4]The ILO classification form also directs physicians to proceed to section 4 if the box marked "NO" is checked in section 3A.

[5]Employer asserts that the administrative law judge erred in failing to adhere to the evidentiary limitations set forth at 20 C.F.R. §725.414 in considering the x-ray evidence. However, employer did not object to the administrative law judge's failure to discuss the application of the evidentiary limitations when the case was still before the administrative law judge at the December 9, 2003 hearing. Because employer did not raise this contention about the evidentiary limitations below, we hold that employer waived its right to challenge it on appeal. *See generally Kurcaba v. Consolidation Coal Co.*, 9 BLR 1-73 (1986).

Employer also contends that the administrative law judge erred in finding the medical opinion evidence sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Drs. Forehand, Iosif, Pillai, Prill, and Weinacker opined that the miner suffered from pneumoconiosis. Director's Exhibits 2, 10, 31; Claimant's Exhibit 2. In contrast, Dr. Fino opined that the miner did not suffer from pneumoconiosis. Employer's Exhibit 1. The administrative law judge discredited the opinions of Drs. Iosif, Pillai, Prill, and Weinacker because he found that they are not reasoned. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The administrative law judge specifically stated:

> Drs. Pillai, Iosif, Prill, and Weinacker were primarily involved in treating the miner for his lung cancer. All of these physicians noted that the miner suffered from coal workers' pneumoconiosis but, standing alone, their reports would not be sufficient to find the disease present under §718.202(a)(4) because the basis for their diagnosis cannot be determined. *Duke v. Director, OWCP*, 6 B.L.R. 1-673 (1983) (a report may be less probative where the physician does not explain how underlying documentation supports his or her diagnosis). Moreover, the undersigned cannot assess whether these physicians knew the length of coal mine employment and extent of the miner's tobacco abuse. *Worhach v. Director, OWCP*, 17 B.L.R. 1-105 (1983)(per curiam); *Trumbo v. Reading Anthracite Co.*, 17 B.L.R. 1-85 (1993). Indeed, Dr. Prill based her finding of coal workers' pneumoconiosis solely on the history provided to her by the miner and his family; she had no other medical data or testing related to diagnosing pneumoconiosis upon which to rely. Therefore, it is determined that the reports of Drs. Pillai, Iosif, Prill, and Weinacker support a finding of coal workers' pneumoconiosis but they are insufficient, standing alone, to establish [the] presence of the disease under §718.202(a)(4) of the regulations.

Decision and Order at 11. In addition, the administrative law judge accorded greater weight to Dr. Forehand's opinion than to the contrary opinion of Dr. Fino because he found that Dr. Forehand's opinion is supported by more extensive documentation.

Employer asserts that Dr. Forehand's opinion is not reasoned. Employer's Brief at 8. Specifically, employer argues that Dr. Forehand did not provide any reasoning to connect his conclusion with any factors other than a positive chest x-ray and the miner's smoking and coal mine employment histories. *Id.* The administrative law judge accorded greater weight to Dr. Forehand's opinion than to Dr. Fino's contrary opinion

because he found that it is supported by more extensive documentation. In considering Dr. Forehand's opinion, the administrative law judge stated that "Dr. Forehand diagnosed coal workers' pneumoconiosis and chronic obstructive pulmonary disease based on the miner's coal dust exposure and smoking history." Decision and Order at 7. The administrative law judge also stated:

> Dr. Forehand's report…is sufficient to support a finding of the disease. He found the presence of legal and clinical pneumoconiosis. His opinion was based on an examination of the miner, an accurate statement of the miner's employment and smoking histories, a positive chest x-ray, hypoxemia on blood gas testing, air trapping on ventilatory testing, and the miner's complaints and symptoms. *Sabett v. Director, OWCP*, 7 B.L.R. 1-299 (1984) (greater weight may be accorded an opinion that is supported by more extensive data.). Moreover, Dr. Forehand's report is supported by a preponderance of the objective medical data of record, *i.e.* preponderantly positive chest x-ray studies. *See* [*Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985)].

Id. at 11-12. However, the administrative law judge did not explain why he concluded that Dr. Forehand diagnosed legal pneumoconiosis. In the cardiopulmonary diagnosis section of his report, Dr. Forehand diagnosed coal workers' pneumoconiosis and chronic obstructive lung disease. Although Dr. Forehand listed coal dust exposure and cigarette smoking in the etiology section of his report, he did not specifically state that the miner's chronic obstructive lung disease was related to both coal dust exposure and cigarette smoking.[6] Further, Dr. Forehand did not provide the bases for his diagnoses of coal workers' pneumoconiosis and chronic obstructive lung disease. The Administrative Procedure Act (APA), 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), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *see also Hall v. Director, OWCP*, 12 BLR 1-80 (1988); *Shaneyfelt v. Jones & Laughlin Steel Corp.*, 4 BLR 1-144 (1981). Thus, since the administrative law judge did not explain why he found that Dr. Forehand diagnosed legal pneumoconiosis and why he found that Dr. Forehand's diagnosis of the disease is supported by more extensive data

---

[6]Because Dr. Forehand did not identify the causes of each of the diagnosed conditions separately, it is not clear from his report whether he intended to relate both the miner's coal workers' pneumoconiosis and chronic obstructive lung disease to coal dust exposure or whether he intended to relate only the coal workers' pneumoconiosis to coal dust exposure and only the chronic obstructive lung disease to cigarette smoking.

than Dr. Fino's contrary opinion, we hold that the administrative law judge erred in according greater weight to Dr. Forehand's opinion on the issue of the existence of pneumoconiosis.[7] *Wojtowicz*, 12 BLR at 1-165.

Moreover, in light of our decision to vacate the administrative law judge's finding that the preponderance of the x-ray readings is positive for pneumoconiosis at 20 C.F.R. §718.202(a)(1), we hold that the administrative law judge erred in finding that Dr. Forehand's diagnosis of pneumoconiosis is supported by a preponderance of the positive x-ray readings.

Employer additionally asserts that the administrative law judge erred in discounting Dr. Fino's opinion. In a report dated January 27, 2003, Dr. Fino opined that the miner did not suffer from either "clinical" pneumoconiosis or "legal" pneumoconiosis. Employer's Exhibit 1. Specifically, Dr. Fino opined that the miner did not suffer from coal workers' pneumoconiosis or a coal mine dust related condition, based on a significant smoking history, a negative x-ray, a negative CT scan, and normal FEV1 and FVC values. *Id.* Citing *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000), the administrative law judge stated that "Dr. Fino's reliance on a chest x-ray study, CT-scan, and pulmonary function study to find no legal pneumoconiosis is not probative." Decision and Order at 12. In *Cornett*, the United States Court of Appeals for the Sixth Circuit agreed with the administrative law judge's assertion that a mere restatement of a positive x-ray is not a reasoned medical opinion at 20 C.F.R. §718.202(a)(4). However, the Sixth Circuit stated that the administrative law judge's factual description of the reports of Drs. Vaezy and Baker in that particular case was clearly inaccurate. The Sixth Circuit in *Cornett* held that the administrative law judge erroneously stated that Drs. Vaezy and Baker based their diagnoses of pneumoconiosis on their x-ray interpretations and a history of coal dust exposure, when, in fact, each based his diagnosis on a number of factors. *Cornett*, 227 F.3d at 576, 22 BLR at 2-120. Specifically, the Sixth Circuit noted that in addition to their x-ray interpretations, Drs. Vaezy and Baker also based their diagnoses of pneumoconiosis on physical examinations, coal mine employment and smoking histories, and pulmonary function studies. *Id.*

The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has not adopted the decision of the Sixth Circuit in *Cornett*. At any rate, since Dr. Fino's opinion is not a mere restatement of an x-ray reading, we

---

[7]Since the administrative law judge properly discredited the opinions of Drs. Pillai, Iosif, Prill and Weinacker because they are not reasoned, *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984), we decline to address employer's assertion that Drs. Pillai, Iosif, Prill and Weinacker did not render an independent diagnosis of pneumoconiosis.

hold that the administrative law judge erred in finding that Dr. Fino's opinion is not probative on the basis that Dr. Fino relied on a chest x-ray, CT scan, and pulmonary function study. *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

Furthermore, in light of our decision to vacate the administrative law judge's finding that the preponderance of the x-ray readings is positive for pneumoconiosis at 20 C.F.R. §718.202(a)(1), we hold that the administrative law judge erred in discounting Dr. Fino's opinion because the negative x-ray readings that it is based upon are outweighed by the positive x-ray readings.

In view of the aforementioned errors by the administrative law judge, we vacate the administrative law judge's finding that the medical opinion evidence is sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) and remand the case for further consideration of the evidence. On remand, the administrative law judge must explain the significance of noting that Dr. Fino "assumed" that coal workers' pneumoconiosis was present in his consideration of the medical opinion evidence at 20 C.F.R. §718.202(a)(4).[8]

Furthermore, on remand, the administrative law judge must weigh all types of relevant evidence together at 20 C.F.R. §718.202(a)(1)-(4) to determine whether the evidence is sufficient to establish the existence of pneumoconiosis in accordance with *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), if he finds the existence of pneumoconiosis established at either 20 C.F.R. §718.202(a)(1) or (a)(4).

---

[8]In weighing Dr. Fino's opinion with the conflicting medical opinions at 20 C.F.R. §718.202(a)(4), the administrative law judge noted twice that Dr. Fino stated that he would "assume" that coal workers' pneumoconiosis was present in his report. Decision and Order at 11, 12. As argued by employer, Dr. Fino made this assumption in presenting his rationale for concluding that pneumoconiosis did not cause the miner's disability and that it did not contribute to his death. Employer's Brief at 10. In a report dated January 27, 2003, Dr. Fino opined that, even if he assumed the presence of coal workers' pneumoconiosis, his conclusions, that the miner did not suffer from a disabling respiratory impairment and that the miner would have died as and when he did had he never stepped foot in the mines, would remain the same. Employer's Exhibit 1. Consequently, Dr. Fino's assumption of the existence of pneumoconiosis is related to the issues of disability causation and death due to pneumoconiosis, as opposed to the issue of the existence of pneumoconiosis.

Next, since we herein vacate the administrative law judge's findings that the evidence is sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4), we also vacate the administrative law judge's finding that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Nonetheless, for the sake of judicial efficiency, we will address employer's contentions of error at 20 C.F.R. §718.205(c)(2).

In finding the evidence sufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c), the administrative law judge considered the miner's death certificate and reports by Drs. Fino, Forehand, Prill, and Weinacker. In the miner's death certificate, Dr. Modi opined that the immediate cause of the miner's death was acute cardio-respiratory arrest due to coal workers' pneumoconiosis, acute respiratory failure and lower lobe pneumonitis. Director's Exhibit 8. In a report dated March 21, 2002, Dr. Forehand opined that coal workers' pneumoconiosis hastened the miner's death. Director's Exhibit 14. Specifically, Dr. Forehand opined that the miner was unable to fully undergo lung cancer treatments recommended by his oncologist due to his underlying respiratory impairment stemming from coal workers' pneumoconiosis. *Id*. In a report dated February 15, 2002, Dr. Prill stated that the miner had a history of black lung disease and overall poor pulmonary status. Employer's Exhibit 2. Dr. Prill further opined that the miner was limited in his ability to tolerate treatments and probably had an earlier demise than what is normally seen with individuals without lung disease in addition to cancer, because of his limited lung capacity. *Id*.

During a deposition dated November 20, 2002, employer's counsel asked Dr. Prill if the miner would have died at the same time even if he did not have black lung disease. Director's Exhibit 31 (Dr. Prill's Deposition at 17). In response, Dr. Prill stated:

> That's a difficult question to answer. The tumor as it stood when I saw him was already terminal, and so it would not have changed the fact that he was going to die from the disease. Had he been in better physical shape, we could have provided additional therapy that may have prolonged his time somewhat, but it would not have cured him.

Id. Employer's counsel also asked Dr. Prill whether she could have provided treatment to the miner that definitely would have prolonged his life if he was not a coal miner. *Id*. Dr. Prill stated, "[a]bsolutely not." *Id*.

In a report dated December 5, 2003, Dr. Weinacker stated, "[s]o far as whether [the miner's] coal miners' pneumoconiosis limited or impaired his treatment options, I believe his medical oncologist, his pulmonologist, and his surgeon could better answer that question from their perspective medical disciplines." Claimant's Exhibit 2. However, from a radiation standpoint, Dr. Weinacker stated, "[b]efore it was documented

that [the miner] truly did have metastatic disease (spread of the tumor outside of the lung), my treatment technique, dose, and radiation field size and location, was no different than what I would treat someone with a similar location but without pneumoconiosis." *Id.* Dr. Fino opined that pneumoconiosis did not cause, play a role, hasten, or contribute to the miner's death. Employer's Exhibit 1.

The administrative law judge discredited the miner's death certificate because he found that it is not reasoned. *Addison v. Director, OWCP*, 11 BLR 1-68 (1988). In weighing the remaining conflicting evidence, the administrative law judge accorded greater weight to the opinions of Drs. Prill and Forehand than to the contrary opinion of Dr. Fino based on Dr. Prill's credentials as an oncologist and the persuasiveness of Dr. Forehand's opinion. The administrative law judge therefore stated:

> That chemotherapy will prolong an individual's life is not guaranteed. However, according to Dr. Prill, chemotherapy is a viable and life-prolonging option for individuals with good "performance status." As a result, the record is persuaded that the miner's compromised lung function, due in part to coal workers' pneumoconiosis, limited his ability to tolerate treatment and left him without chemotherapy options that could have prolonged his life. Consequently, it is determined that coal workers' pneumoconiosis hastened the miner's death.

Decision and Order at 14.

Employer asserts that the administrative law judge erred in according greater weight to Dr. Forehand's opinion that pneumoconiosis contributed to the miner's death because, employer alleges, Dr. Forehand did not provide any documentation to support it and he did not provide any reasoning connecting any documentation with his conclusions. Employer's Brief at 11. In a report dated March 21, 2002, Dr. Forehand noted that he previously found that the miner had a totally and permanently disabling respiratory impairment of a gas-exchange nature that arose out of his coal mine employment. Director's Exhibit 14. Next, Dr. Forehand noted that the miner was diagnosed with lung cancer after his evaluation. *Id.* Then Dr. Forehand stated that the miner's death was hastened because he was unable to fully undergo recommended treatments by his oncologist due to his underlying respiratory impairment stemming from coal worker's pneumoconiosis. *Id.* Hence, Dr. Forehand concluded that coal workers' pneumoconiosis contributed to the miner's death. *Id.*

The administrative law judge stated that "Dr. Forehand's opinion is also probative because he diagnosed the presence of pneumoconiosis and persuasively opined that the disease compromised the miner's lung function such that his treatment options were limited." Decision and Order at 14. However, in discussing the miner's lung function,

Dr. Forehand did not address the severity of the respiratory impairment caused by the miner's pneumoconiosis. Further, Dr. Forehand did not indicate what documentation he relied upon to support his opinion. Thus, since the administrative law judge did not explain why he found that Dr. Forehand persuasively opined that pneumoconiosis compromised the miner's lung function so that his treatment options were limited, we hold that the administrative law judge erred in according greater weight to Dr. Forehand's opinion on that basis. *Wojtowicz*, 12 BLR at 1-165.

Employer further asserts that the administrative law judge erred in his consideration of Dr. Prill's opinion. Specifically, employer argues that Dr. Prill did not state that the miner's compromised lung function was due to black lung disease. Employer's Brief at 11. The administrative law judge noted, "[i]n her February 2002 letter, Dr. Prill stated that, because of the miner's compromised lung function arising from black lung disease, she could not perform surgery to remove the cancer." Decision and Order at 9. In a report dated February 15, 2002, Dr. Prill stated that "[the miner] was initially evaluated for [the] possibility of resection but due to his *history of black lung disease and his overall poor pulmonary status*, this was not pursued and instead he underwent radiation therapy." Employer's Exhibit 2 (emphasis added). During a subsequent deposition, Dr. Prill clarified her prior opinion by testifying that the miner would not have done well at surgery because of his *poor lung function*. Employer's Exhibit 2 (Dr. Prill's November 20, 2002 Deposition at 14). Dr. Prill additionally testified that she was not aware of the "diagnosis" of black lung disease prior to the miner's death. Employer's Exhibit 2 (Dr. Prill's November 20, 2002 Deposition at 15). Rather, Dr. Prill testified that the miner's medical history came from the miner as opposed to another physician. *Id.* Thus, since the administrative law judge did not explain why he concluded that Dr. Prill opined that the miner's compromised lung function arose from his *black lung disease*, we hold that the administrative law judge erred in concluding that Dr. Prill opined that the miner's compromised lung condition arose from *black lung disease*. *Wojtowicz*, 12 BLR at 1-165.

Employer additionally asserts that Dr. Prill's opinion does not satisfy the APA's requirement that evidence qualify as reliable, probative, and substantial, because Dr. Prill's opinion is tentative. As discussed *supra*, in a report dated February 15, 2002, Dr. Prill stated, "[b]ecause of [the miner's] limited lung capacity, I do believe that he was limited in his ability to tolerate treatments and *probably* had [an] earlier demise than what we normally see in individuals without lung disease in addition to the cancer." Employer's Exhibit 2 (emphasis added). Since Dr. Prill equivocated in her assessment of whether the miner had an earlier demise because of his limited ability to tolerate treatments, we hold that, if reached on remand, the administrative law judge must address this equivocation by Dr. Prill in reconsidering the weight and credibility of the medical opinion evidence. *U.S. Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999).

Employer also asserts that the administrative law judge erred in discounting Dr. Fino's opinion that pneumoconiosis did not contribute to the miner's death. The administrative law judge accorded greater weight to the opinions of Drs. Prill and Forehand, that pneumoconiosis contributed to the miner's death, than to the contrary opinion of Dr. Fino, based on Dr. Prill's credentials as an oncologist and the persuasiveness of Dr. Forehand's opinion. In considering the opinions of Drs. Prill and Forehand, the administrative law judge stated:

> Dr. Prill's opinion is accorded greater weight given that she specializes in providing chemotherapy to cancer patients and is, therefore, highly knowledgeable about the types of treatment available to persons with and without poor lung function. Moreover, Dr. Forehand's opinion is also probative because he diagnosed the presence of pneumoconiosis and persuasively opined that the disease compromised the miner's lung function such that his treatment options were limited.

Decision and Order at 14. The record indicates that Dr. Prill is Board-certified in internal medicine with a subspecialty in medical oncology. Director's Exhibit 31. The record also indicates that Dr. Fino is Board-certified in internal medicine with a subspecialty in pulmonary disease. Employer's Exhibit 1. However, the administrative law judge did not consider Dr. Fino's credentials in pulmonary disease. Since the administrative law judge did not explain why Dr. Prill's qualifications in oncology are superior to, or more relevant than, Dr. Fino's qualifications in pulmonary disease, we hold that the administrative law judge erred in according greater weight to Dr. Prill's opinion based on her qualifications. *Wojtowicz*, 12 BLR at 1-165. Furthermore, since the administrative law judge did not explain why Dr. Forehand's opinion is more persuasive than the contrary opinion of Dr. Fino, we hold that the administrative law judge erred in according greater weight to Dr. Forehand's opinion on this basis. *Id.*

Therefore, if reached on remand, the administrative law judge must provide an explanation for his findings and conclusions at 20 C.F.R. §718.205(c) that is in accordance with the requirements of the APA. *Wojtowicz*, 12 BLR at 1-165.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge