

BRB No. 09-0180 BLA

E.B. )  
(Widow of O.B.) )  
 )  
Claimant-Respondent )  
 )  
v. )  
 )  
INDIAN MOUNTAIN COAL COMPANY )  
 )  
and ) DATE ISSUED: 09/23/2009  
 )  
OLD REPUBLIC INSURANCE COMPANY )  
 )  
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 on Remand 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 on Remand (05-BLA-5307) 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). This case is before the Board for the second time. In the original Decision and Order, the administrative law judge credited the miner with 19.22 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 did not establish the presence of complicated pneumoconiosis and, thus, she found that the evidence did not establish invocation of the irrebuttable presumption of death due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Nevertheless, the administrative law judge found that the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) 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.

In response to employer's appeal, the Board affirmed the administrative law judge's unchallenged length of coal mine employment finding and her findings that the evidence established the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a) and 718.203(b). *E.B. v. Indian Mountain Coal Co.*, BRB No. 07-0453 BLA, slip op. at 2 n.2 (Feb. 29, 2008)(unpub.). However, the Board vacated 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). *E.B.*, slip op. at 4. The Board therefore vacated the administrative law judge's award of benefits.

On remand, the administrative law judge found that the evidence established that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, the administrative law judge again awarded benefits.

On appeal, 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<sup>1</sup> responds, urging affirmance of the administrative law judge's award of benefits.<sup>2</sup> The Director, Office of Workers' Compensation Programs, has declined to file a brief in this appeal.

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<sup>1</sup> Claimant is the widow of the miner, who died on May 31, 2003. Director's Exhibit 9. She filed her survivor's claim in October 2003. Director's Exhibit 2.

<sup>2</sup> Employer also filed a brief in reply to claimant's response brief, reiterating its prior contentions.

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.<sup>3</sup> 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).<sup>4</sup> *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.

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<sup>3</sup> The record indicates that the miner was employed in the coal mining industry in Virginia. Director's Exhibit 5. 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*).

<sup>4</sup> 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.

§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).

At Section 718.205(c), the administrative law judge considered the death certificate completed by Dr. Robinette, the miner’s treating physician, the hospital discharge summary by Dr. Robinette, the autopsy reports of Drs. Hudgens and Naeye,<sup>5</sup> and the medical reports of Drs. Perper, Castle, and Fino. In the death certificate, Dr. Robinette listed respiratory failure secondary to pneumonia as the immediate cause of the miner’s death. Director’s Exhibit 9. Dr. Robinette also listed pulmonary fibrosis with coal workers’ pneumoconiosis as an underlying cause of the miner’s death. *Id.* In the hospital discharge summary, Dr. Robinette diagnosed respiratory failure secondary to methicillin-resistant staphylococcus aureus pneumonia and Candida pneumonia, pulmonary fibrosis with simple pneumoconiosis, congestive heart failure with components of cor pulmonale, and diabetes mellitus. Director’s Exhibit 11. In his autopsy report, Dr. Hudgens diagnosed simple coal workers’ pneumoconiosis, usual interstitial pneumonitis, cardiac hypertrophy and dilatation consistent with congestive heart failure, and severe coronary atherosclerosis. Director’s Exhibit 8. In his autopsy report, Dr. Naeye opined that very fibrotic lesions in the miner’s lungs had a significant role in his death. Employer’s Exhibit 6. Dr. Naeye also opined that neither coal workers’ pneumoconiosis nor occupational exposures from coal mining caused or had a role in the miner’s death. Employer’s Exhibits 6, 8. In his report, Dr. Perper opined that coal workers’ pneumoconiosis and causally-associated centrilobular emphysema was a substantially contributing cause and hastening factor in the miner’s death. Claimant’s Exhibit 3. In his report, Dr. Castle opined that the miner’s death was entirely due to respiratory failure from usual interstitial pneumonitis. Employer’s Exhibit 11. Dr. Castle also opined that “[the miner] died as and when he would have regardless of his previous history of coal mine employment.” *Id.* Dr. Castle further opined that even assuming that

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<sup>5</sup> Employer asserts that the administrative law judge erred in rendering a finding in her decision, on remand, that Dr. Naeye’s report was inadmissible. In her Decision and Order on Remand, the administrative law judge stated that “although Dr. Naeye’s opinion was offered solely as an autopsy report, it appears to go beyond an autopsy report and rehabilitation report.” Decision and Order on Remand at 21. The administrative law judge further stated that “[t]o the extent that this opinion is a third medical opinion, it would not be admissible.” *Id.* Nevertheless, the administrative law judge found that Dr. Naeye’s opinion may be considered as an autopsy report. *Id.* Thus, because the administrative law judge considered Dr. Naeye’s opinion at Section 718.205(c), we hold that any error by the administrative law judge in finding that Dr. Naeye’s opinion was not admissible as a medical report was harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

the miner had coal workers' pneumoconiosis, coal workers' pneumoconiosis did not contribute to the miner's death. Employer's Exhibit 12 (Dr. Castle's Deposition at 25-26). In his report, Dr. Fino opined that the miner died from idiopathic interstitial pulmonary fibrosis of the usual interstitial pneumonitis type unrelated to coal dust inhalation. Employer's Exhibit 9. Dr. Fino also opined that coal workers' pneumoconiosis was not a factor in the miner's death. *Id.* Dr. Fino further opined that "[r]egardless of the presence or absence of that disease, what caused...death was idiopathic interstitial pulmonary fibrosis unrelated to coal dust inhalation."<sup>6</sup> *Id.*

The administrative law judge gave little weight to the opinions of Drs. Castle and Naeye because she found that they were based on the faulty premise that the miner did not have clinical or legal pneumoconiosis.<sup>7</sup> Decision and Order on Remand at 9-12, 20-21. The administrative law judge also gave diminished weight to Dr. Fino's opinion because she found that the doctor's conclusion regarding the presence of pneumoconiosis "is tantamount to a finding that pneumoconiosis cannot progress and appear after a period of latency subsequent to coal mine employment." *Id.* at 18. The administrative law judge gave greater weight to Dr. Perper's opinion because she found that the doctor's opinion was the best documented and the best reasoned. *Id.* at 21. Further, the administrative law judge found that Dr. Perper's opinion was buttressed by Dr. Robinette's opinion.<sup>8</sup> *Id.* at 22. Hence, the administrative law judge concluded that the medical evidence established that pneumoconiosis contributed to the miner's death.

Employer initially argues that the administrative law judge erred in finding that the Board affirmed her prior finding that the evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a). Employer asserts that it previously disputed the issue of legal pneumoconiosis when this case was before the Board. In her original Decision and Order, the administrative law judge found that "all the evidence submitted on the issue of pneumoconiosis, considered together, establishes that [the miner] was suffering from simple coal workers' pneumoconiosis and legal pneumoconiosis at the

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<sup>6</sup> Dr. Fino additionally opined that "[the miner] would have died as and when he did had he never contracted a coal mine dust related lung condition or had he never been exposed to a coal mine dust hazard." Employer's Exhibit 9.

<sup>7</sup> The administrative law judge found that because Dr. Fino conceded the existence of pneumoconiosis, Dr. Fino's opinion was not, and should not be, discredited because it was based on a faulty premise. Decision and Order on Remand at 12.

<sup>8</sup> The administrative law judge stated that "[Dr. Robinette's opinion] was memorialized in contemporaneous treatment records and recorded on [the miner's] death certificate." Decision and Order on Remand at 12.

time of his death.” Decision and Order at 24. In its Decision and Order, the Board affirmed the administrative law judge’s unchallenged finding that the miner had pneumoconiosis at 20 C.F.R. §718.202(a). *E.B.*, slip op. at 2 n.2. In her Decision and Order on Remand, the administrative law judge stated that “[i]nasmuch as the Board affirmed [her prior finding of legal pneumoconiosis] and all of the physicians agree that the pulmonary fibrosis contributed to [the miner’s] death, the evidence strongly supports a finding that pneumoconiosis caused or contributed to [the miner’s] death.” Decision and Order on Remand at 19. However, the administrative law judge also stated, “for the sake of completeness and full compliance with the Board’s instructions, I will engage in a further analysis.” *Id.* Because the administrative law judge did not rely on her prior finding that the evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) in reaching her finding on remand, that the evidence established that the miner’s death was due to pneumoconiosis at 20 C.F.R. §718.205(c), we hold that any error by the administrative law judge in finding that the Board affirmed her prior finding of legal pneumoconiosis was harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Employer next argues that the administrative law judge erred in relying on Dr. Perper’s opinion because it was based on an inaccurate smoking history. Specifically, employer asserts that the administrative law judge erred in finding that Dr. Perper’s statement that the miner was a light smoker was a technical error. Employer maintains that “[t]his is not a judgment the [administrative law judge] is able to make – unless it was plain from the doctor’s report that the misstatement did not affect his conclusions.” Employer’s Brief at 16.

In its Decision and Order, the Board instructed the administrative law judge to address the inconsistency in Dr. Perper’s opinion regarding the miner’s smoking history, as Dr. Perper stated, on the one hand, that the miner was a life-long non-smoker and, at the same time, that the miner had been a light smoker. *E.B.*, slip op. at 5.

In his report, Dr. Perper opined that objective evidence indicated that the miner had significant coal workers’ pneumoconiosis based on “[a]ssociated centrilobular emphysema with bullae in an individual who had been a *light smoker* and stopped smoking 36 years prior to his demise” and “[p]rogressive respiratory deterioration in a *life-long non-smoker* coal miner, with no evidence of congestive heart failure, tuberculosis, granulomatous disease or cancer.” Claimant’s Exhibit 3 at 42 (emphasis added). Dr. Perper subsequently opined that coal workers’ pneumoconiosis was the primary cause of the miner’s death and a hastening factor of his death. Claimant’s Exhibit 3 at 48. Dr. Perper stated that a mechanism of death associated with the miner’s coal workers’ pneumoconiosis was “[a]ssociated centrilobular emphysema particularly in a *non-smoker*.” Claimant’s Exhibit 3 at 48 (emphasis added).

In her Decision and Order on Remand, the administrative law judge stated that “[f]rom a close examination of Dr. Perper’s report, in which he reviewed and individually summarized medical records indicating that [the miner] was a lifelong non-smoker and referenced numerous reports of [the miner’s] absence of a smoking history (e.g., CX 3 at p. 3), it is clear that Dr. Perper was accurately apprised of [the miner’s] status as a lifelong non-smoker.” Decision and Order on Remand at 12. The administrative law judge therefore found that the inconsistency in Dr. Perper’s report regarding the miner’s smoking history was a technical error that did not factor into the doctor’s decision-making processes. *Id.* at 12-13. Hence, the administrative law judge concluded that the inconsistency in the smoking history was not a basis to discredit Dr. Perper’s opinion. *Id.* at 13.

An administrative law judge, as the trier-of-fact, has broad discretion to assess the evidence of record and determine whether a party has met its burden of proof. *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). In this case, the administrative law judge acted within her discretion in finding that the inconsistency regarding the smoking history in Dr. Perper’s report was a technical error that did not effect Dr. Perper’s decision-making processes. *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986). The Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985). We, therefore, reject employer’s assertion that the administrative law judge erred in relying on Dr. Perper’s opinion because it was based on an inaccurate smoking history.

Employer further argues that the administrative law judge erred in according greater weight to Dr. Perper’s opinion than to the contrary opinions of Drs. Naeye, Fino, and Castle. In his report, Dr. Perper opined that the miner had interstitial coal workers’ pneumoconiosis, by explaining:

Interstitial coal workers’ pneumoconiosis is a more recently described type of coal workers’ pneumoconiosis characterized by interstitial pulmonary fibrosis, mimicking diffuse interstitial fibrosis on a background of pneumoconiotic macules and nodules. In the past two decades or so, a number of studies have substantiated the presence of interstitial diffuse pulmonary fibrosis in workers having coal miners’ pneumoconiosis. The scientific literature has substantiated that Diffuse Interstitial Fibrosis (and its variations such as Idiopathic Pulmonary Fibrosis, Usual Interstitial Pneumonia, including in recent years idiopathic diffuse alveolar damage and idiopathic broncho-alveolar dysplasia)) (sic) of the lungs may be present in non-asbestos pneumoconioses including silicosis and mixed dust pneumoconiosis and caused by the occupational dust exposure.

Claimant's Exhibit 3 at 43.<sup>9</sup>

Dr. Perper further explained that coal workers' pneumoconiosis was the primary cause of the miner's death and a hastening factor of his death, both directly and indirectly, through "[p]ulmonary insufficiency by direct and extensive replacement of normal lung tissue by non breathing pneumoconiotic lesions associated centrilobular chronic emphysema, and resulting hypoxemia and emphysematous bullae prone to rupture and causing pneumothorax." Claimant's Exhibit 3 at 48.

In considering the medical evidence at Section 718.205(c), the administrative law judge stated that "[Dr. Perper] thoroughly explained the reasons and bases for his diagnoses and conclusions." Decision and Order on Remand at 14. The administrative law judge also noted that "the opinions of Drs. Fino, Naeye, and Perper all make reference to pertinent medical literature." *Id.* Nonetheless, the administrative law judge found that although the opinions of Drs. Fino and Perper are documented, based on multiple citations to various academic works regarding pneumoconiosis and other forms of pulmonary fibrosis, Drs. Fino and Perper reached different conclusions on this issue. Further, after noting that it does not necessarily follow that Drs. Fino and Perper logically tied the academic documentation to their conclusions in this case, the administrative law judge stated:

Dr. Fino opined that rapid progression of [the miner's] symptoms suggested a process unrelated to coal dust but, rather, to the idiopathic form of pulmonary fibrosis; however, the pattern known as usual interstitial pneumonitis (UIP) was diagnosed on biopsy back in February 1998 as "marked interstitial fibrosis" (EX 3) and [the miner] died in June 2003, five years later. Thus, [the miner's] lung disease progression that Dr. Fino has suggested was "rapid" took over five years from the time of diagnosis – at which point it was already "marked" or, according to Dr. Fino, "severe" – until the time of death.

On the other hand, Dr. Perper relied on the studies to show that the interstitial fibrosis type of coal workers' pneumoconiosis can be associated with findings mimicking idiopathic pulmonary fibrosis.

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<sup>9</sup> The administrative law judge stated that "[w]hether this form of [coal workers' pneumoconiosis] is 'clinical pneumoconiosis' or 'legal pneumoconiosis' is not critical to Dr. Perper's analysis, as Dr. Perper discussed multiple studies substantiating the...statements [in his report that interstitial pulmonary fibrosis is a type of coal workers' pneumoconiosis]." Decision and Order on Remand at 15.



*Id.* (footnote omitted).

The administrative law judge also stated:

In discussing the studies in his September 8, 2005 report, Dr. Fino recognized that they reported the coexistence of the two forms of fibrosis, as well as the fact that the interstitial pulmonary fibrosis was “modified by the inhalation of coal dust” (resulting in a more benign form of disease than idiopathic pulmonary fibrosis), but he noted that there had been differing definitions for types of pulmonary fibrosis and he questioned whether there was a cause and effect relationship. (EX 9). At his deposition, he suggested that the coexistence could be due to “coincidence.” (EX 14 at 12). However, Dr. Perper has provided an explanation for these findings based upon the...statement from his report, to the effect that the resulting, less toxic disease, is actually a type of coal workers’ pneumoconiosis.

*Id.* at 14-15.

The administrative law judge also found that Dr. Naeye’s opinion was not documented, reasoned, or persuasive, by stating:

While claiming personal knowledge of many cases over the course of his career, Dr. Naeye, in contrast to Drs. Fino and Perper, referred only to one piece of supporting medical literature, dated nearly 30 years ago, on which he is listed as co-author. (EX 8). Of the three opinions the Board instructed me to consider in light of supporting documentation, Dr. Naeye’s opinion is least supported by citation to medical literature. Interestingly, in his August 24, 2005 supplemental report, Dr. Naeye questions Dr. Perper’s findings but only cited the 1979 study and he did not address the issue of mixed dust exposure or the phenomenon of interstitial coal workers’ pneumoconiosis discussed by Dr. Perper (quoted above).

*Id.* at 15 (footnote omitted).

Further, in finding that Dr. Castle did not adequately address Dr. Perper’s conclusions, the administrative law judge stated:

Dr. Perper did not ignore the usual interstitial pneumonitis in [the miner’s] lungs, as Dr. Castle asserted at his deposition; rather, he found that coal dust exposure contributed to the formation of a form of interstitial pulmonary fibrosis that incorporated features of UIP and CWP, which he called interstitial coal workers’ pneumoconiosis.

*Id.* at 21.

An administrative law judge, as the trier-of-fact, has broad discretion to assess the evidence of record and determine whether a party has met its burden of proof. *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). In this case, the administrative law judge properly accorded greater weight to Dr. Perper's opinion than to the contrary opinions of Drs. Naeye, Fino, and Castle, because she found that Dr. Perper's opinion was better documented and better reasoned. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). In addition, the administrative law judge properly accorded determinative weight to Dr. Perper's opinion because she found that it was supported by Dr. Robinette's opinion. *Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991); *Bethlehem Mines Corp. v. Massey*, 736 F.2d 120, 7 BLR 2-72 (4th Cir. 1984); *Newland v. Consolidation Coal Co.*, 6 BLR 1-1286 (1984).<sup>10</sup> Thus, we reject employer's assertion that the administrative law judge erred in according greater weight to Dr. Perper's opinion than to the contrary opinions of Drs. Naeye, Fino, and Castle. 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);

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<sup>10</sup> Employer also argues that the administrative law judge erred in discounting the opinions of Drs. Naeye and Castle because she found that they relied on the faulty premise that the miner did not have pneumoconiosis. Employer additionally argues that the administrative law judge erroneously substituted her opinion for that of an expert by finding that that Dr. Fino relied on the rapid progression of symptoms even though the miner did not die for at least five years after they developed from an already severe state. Further, employer argues that the administrative law judge erred in discounting Dr. Fino's opinion because she found that Dr. Fino entirely discounted the possibility that the miner's pneumoconiosis could be latent and progressive in contravention to the regulations. Because the administrative law judge provided valid alternate bases for finding that Dr. Perper's opinion outweighed the contrary opinions of Drs. Naeye, Fino, and Castle, *Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378 (1983), namely, she properly found that Dr. Perper's opinion was better documented and better reasoned, *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997), and she properly found that it was supported by Dr. Robinette's opinion, *Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991); *Bethlehem Mines Corp. v. Massey*, 736 F.2d 120, 7 BLR 2-72 (4th Cir. 1984); *Newland v. Consolidation Coal Co.*, 6 BLR 1-1286 (1984), we decline to address these assertions.

*Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

Because it is supported by substantial evidence, we affirm 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).

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is affirmed.

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