

Employer appeals the Decision and Order (86-BLA-0918) of Administrative Law Judge Henry W. Sayrs and the Decision and Order on Reconsideration of Administrative Law Judge James Guill awarding benefits and designating employer as the responsible operator on a 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).

Judge Sayrs awarded benefits based on his finding that the miner's pneumoconiosis substantially contributed to his death pursuant to 20 C.F.R. §718.205(c)(2). Employer appealed and the Director, Office of Workers' Compensation Programs (the Director), cross-appealed Judge Sayrs' Decision and Order. However, because the Director had also filed a motion for reconsideration which was still pending with the administrative law judge, the Board dismissed both appeals as premature.¹ *Stiltner v. Whited Prospect Coal Co.*, BRB Nos. 88-0477 BLA/A (Oct. 20, 1992)(Order)(unpub.). On reconsideration, the case was reassigned to Judge Guill, who granted the Director's motion for reconsideration, found employer to be the responsible operator, and modified the periods of claimant's entitlement to reflect her two remarriages.

On appeal, employer contends that Judge Guill failed to consider all of the relevant evidence regarding the responsible operator and that Judge Sayrs provided no rationale for his finding that the miner's death was due to pneumoconiosis. Employer also asserts that it was prejudiced in that it was never served with the Director's motion for reconsideration, was not notified that the case would be reassigned, and was provided no explanation for Judge Guill's finding that Judge Sayrs was unavailable to decide the motion for reconsideration. Claimant responds, urging affirmance. The Director responds, urging remand on the responsible operator issue.²

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,

¹ The Director's motion urged the administrative law judge to designate a responsible operator and to adjust the periods of claimant's entitlement.

² We affirm as unchallenged on appeal the administrative law judges' findings regarding length of coal mine employment, the dates of claimant's entitlement, and pursuant to 20 C.F.R. §§718.202(a)(2), 718.203(b), and 718.205(c)(1), (3). See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

and is in accordance with law. 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).

Both employer and the Director assert that Judge Guill failed to consider all of the relevant evidence regarding the responsible operator issue. Employer's Brief at 19-21; Director's Brief at 5. This contention has merit. The administrative law judge found employer to be the responsible operator based solely on the miner's Social Security earnings records. Director's Exhibit 9; Decision and Order on Reconsideration at 2-3. However, other employment records and certain testimony not discussed by the administrative law judge may, if credited, indicate that the miner had more than one year of coal mine employment with another operator subsequent to his work with employer. Director's Exhibits 5, 7; Hearing Transcript at 25, 29, 42, 47; see 20 C.F.R. §725.493(a). Because the administrative law judge did not consider this evidence, we must vacate his finding and remand the case for him to consider all relevant evidence regarding the responsible operator issue.³

Employer further asserts that the administrative law judge failed to provide a rationale for his finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(2). Employer's Brief at 23-24. Death will be considered due to pneumoconiosis if claimant establishes that pneumoconiosis was a substantially contributing cause of death. 20 C.F.R. §718.205(c)(2). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that if pneumoconiosis hastens death in any way, it is a substantially contributing cause of death pursuant to Section 718.205(c)(2). *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

The miner's death certificate indicates that death was due to cardiac arrhythmia and lists no contributing causes. Director's Exhibit 18. On autopsy, Dr. Yoneyama diagnosed end-stage renal disease, congestive heart failure, neurogenic bladder syndrome, pulmonary congestion, and silicosis. Director's Exhibit 19. Dr. Yoneyama concluded that the "direct cause of death is considered to be . . . congestive heart failure, in addition to multiple contributing factors as stated above." *Id.* Dr. Robinette reviewed the autopsy report and a summary of the medical evidence and opined that the miner's pneumoconiosis

³ We decline to transfer liability for benefits to the Black Lung Disability Trust Fund (the Trust Fund) pursuant to *Crabtree v. Bethlehem Steel Corp.*, 7 BLR 1-354 (1984). Employer's Brief at 21. Unlike the factual situation of *Crabtree*, in this case the administrative law judge has not yet considered all of the relevant evidence, and claimant does not have an affirmable award.

caused respiratory symptoms that “played a significant role” in his death due to complications of diabetes and renal insufficiency. Claimant's Exhibit 1. However, Drs. Hansbarger, O'Connor, and Buddington reviewed the autopsy report and tissue slides, while Drs. Dahhan and Stewart reviewed the autopsy report and the other medical evidence of record, and all concluded that the miner's death was unrelated to his simple pneumoconiosis but rather was due to congestive heart failure and renal failure arising from his diabetes and paraplegia. Director's Exhibit 20; Employer's Exhibits 1-3.

The administrative law judge stated that the autopsy report indicated that pneumoconiosis “could have been a contributing factor.” Decision and Order at 10. After summarizing Dr. Robinette's opinion that pneumoconiosis contributed to the miner's death, the administrative law judge observed that “the other doctors . . . tend to disagree with this finding.” *Id.* The administrative law judge then discussed generally the results of the two pulmonary function studies of record, one of which was qualifying⁴ and one of which was not, and the single blood gas study, which was non-qualifying. Decision and Order at 11. With no further discussion of the medical evidence, the administrative law judge concluded that pneumoconiosis was a substantial contributing cause of the miner's death. *Id.* An administrative law judge has broad discretion in weighing the medical evidence, but must provide a sufficient rationale therefor as required by the Administrative Procedure Act (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); see *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); see also *Director, OWCP v. Congleton*, 743 F.2d 428, 7 BLR 2-12 (6th Cir. 1984). Inasmuch as the administrative law judge did not provide a rationale for his finding, we must vacate his finding and remand the case for the administrative law judge to consider all of the relevant evidence pursuant to Section 718.205(c)(2) in accordance with *Shuff, supra*, and to adequately explain his findings.

Regarding employer's allegations of procedural error, we agree with the Director that these issues may be adequately addressed on remand. The Director replies that he has now sent a copy of his motion for reconsideration to employer, and employer acknowledges receipt. Director's Brief at 3 n.2; Employer's Reply at 3 n.1. On remand, the parties may request the specific rationale for reassigning the case, the opportunity to brief the responsible operator issue, and a new hearing.

⁴ A "qualifying" objective study yields values which are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1), (c)(2).

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

SO ORDERED.

BETTY JEAN HALL
Chief Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge