BRB No. 11-0447 BLA

IDA RUTH BURCHETT (Widow of ROBERT BURCHETT)	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED: 10/24/2012
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts (William Lawrence Roberts, P.S.C.), Pikeville, Kentucky, for claimant.

Maia S. Fisher (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Decision and Order on Remand (2006-BLA-5483) of Administrative Law Judge John P. Sellers, III, denying benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944

[1] Claimant is the surviving spouse of the miner, who died on January 6, 2001. Director's Exhibits 2, 14. The miner filed a claim on April 23, 1980; however, he submitted no medical evidence in connection with that claim, and it was denied as abandoned on November 12, 1981. Director's Exhibit 1.

(Supp. 2011) (the Act). This case involves a survivor's claim filed on April 25, 2005, and is before the Board for the second time.

In a Decision and Order dated May 29, 2008, Administrative Law Judge Thomas F. Phalen, Jr., found that employer (Gum Branch Coal Company) was the responsible operator under 20 C.F.R. §725.493(b). Relying on an April 11, 1980 x-ray interpretation by Dr. Martin, Judge Phalen further found that claimant established that the miner had complicated pneumoconiosis arising out of his coal mine employment and, therefore, established invocation of the irrebuttable presumption of death due to pneumoconiosis pursuant to Section 411(c)(3) of the Act, as implemented by 20 C.F.R. §718.304. Accordingly, Judge Phalen awarded benefits.

Pursuant to employer's appeal, the Board vacated Judge Phalen's finding that employer was the responsible operator pursuant to 20 C.F.R. §§725.492(c), 725.493(a), and directed Judge Phalen to explain the basis for his findings on remand. *I.B.* [*Burchett*] *v. Gum Branch Coal Co.*, BRB Nos. 08-0678 BLA and 08-0678 BLA-S, slip op. at 4 (July 22, 2009) (Boggs, J., concurring and dissenting) (unpub.). The Board further vacated Judge Phalen's finding that Dr. Martin's interpretation of the April 1980 x-ray film, which had been destroyed, was legally sufficient to support a finding of pneumoconiosis, as Judge Phalen did not address whether the x-ray reading substantially complied with the quality standards at 20 C.F.R. §718.102(d), (e) (2000). *Id.* at 5-7. Finally, because Judge Phalen's finding at 20 C.F.R. §718.102 could affect his weighing of the evidence at 20 C.F.R. §718.304 on remand, the Board also vacated Judge Phalen's finding that the preponderance of the evidence established that the miner had complicated pneumoconiosis. *Id.* at 7. Accordingly, the Board remanded this case to the administrative law judge for further consideration.

On remand, due to Judge Phalen's retirement, the case was reassigned, without objection, to Administrative Law Judge John P. Sellers, III (the administrative law judge), who credited the miner with nineteen years of coal mine employment,[2] pursuant to the parties' stipulation, and found that the miner smoked at least two and a half packs of cigarettes a day for forty years. Decision and Order on Remand at 12, 17. The administrative law judge further found that employer was not properly identified as the responsible operator pursuant to 20 C.F.R. §725.494(c), because the miner worked for employer for a cumulative period of less than one year. *Id.* at 6. The administrative law

[2] The record reflects that the miner's last coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

judge, therefore, determined that the Black Lung Disability Trust Fund would bear the liability for any benefits awarded.[3]

Considering the merits of entitlement, the administrative law judge found Dr. Martin's April 1980 x-ray reading to be unreliable and, therefore, insufficient to support a finding of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Finding that the record contains no other evidence supporting a diagnosis of complicated pneumoconiosis, the administrative law judge determined that claimant is not entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.304.

Next, the administrative law judge noted that, on March 23, 2010, subsequent to the Board's decision, Congress enacted amendments to the Act affecting claims filed after January 1, 2005, that were pending on March 23, 2010.[4] Relevant to this survivor's claim, Section 1556 of Public Law No. 111-148 reinstated Section 411(c)(4) of the Act, which provides that if a miner had at least fifteen years of qualifying coal mine employment, and had a totally disabling respiratory impairment, there is a rebuttable presumption that his death was due to pneumoconiosis.[5] Pub. L. No. 111-148, §1556(a), 124 Stat. 119 (2010) (codified at 30 U.S.C. §921(c)(4)).

Applying amended Section 411(c)(4), the administrative law judge found that the miner worked for more than fifteen years in underground coal mine employment. The administrative law judge further found that the evidence did not establish total disability

[3] On June 21, 2011, following the administrative law judge's Decision and Order on Remand, employer moved to be dismissed as the responsible operator in this case. The Director, Office of Workers' Compensation Programs (the Director), filed a response, indicating that he did not oppose employer's request. By Order dated September 28, 2011, the Board dismissed employer as a party in the case before the Board, and amended the caption to reflect the Director as the respondent. *Burchett v. Director, OWCP*, BRB No. 11-0447 BLA, slip op. at 1 (Sept. 28, 2011) (unpub. Order).

[4] In an April 13, 2010 Order, the administrative law judge provided the parties with notice of amended Section 411(c)(4), and of its potential applicability to this case, and allowed the parties to submit position statements and additional evidence. No additional evidence was submitted.

[5] Another amendment reinstated the derivative entitlement provision of Section 932(*l*) of the Act, 30 U.S.C. §932(*l*), but that amendment does not affect this case, as the miner's lifetime claim was denied. Pub. L. No. 111-148, §1556(a), 124 Stat. 119 (2010) (codified at 30 U.S.C. §932(*l*)).

pursuant to 20 C.F.R. §718.204(b)(2). Thus, the administrative law judge concluded that claimant did not invoke the rebuttable presumption that the miner's death was due to pneumoconiosis.

Finally, the administrative law judge found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and, therefore, did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in finding that the x-ray evidence is not sufficient to support a finding of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304(a). Claimant further asserts that the administrative law judge erred in finding that she did not invoke the rebuttable presumption at Section 411(c)(4) of the Act. Finally, claimant contends that the administrative law judge erred in finding that the x-ray and medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4) and, therefore, erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), 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. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). A miner's death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable, or the presumption under Section 411(c)(4) of the Act is applicable and has not been rebutted. 20 C.F.R. §718.205(c)(1)-(3), Pub. L. No. 111-148, §1556(a), 124 Stat. 119 (2010) (codified at 30 U.S.C. §921(c)(4)). 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); *Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-116 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993).

Complicated Pneumoconiosis

Claimant initially contends that the administrative law judge erred in finding that the miner did not have complicated pneumoconiosis and, therefore, erred in determining that claimant did not invoke the irrebuttable presumption of death due to pneumoconiosis at 20 C.F.R. §718.304.[6] Specifically, claimant argues that the administrative law judge erred in finding that Dr. Martin's April 11, 1980 x-ray report was not sufficient to establish the existence of complicated pneumoconiosis. We disagree.

In considering whether claimant established the existence of complicated pneumoconiosis, the administrative law judge noted that the April 1980 x-ray reading by Dr. Martin is the only evidence supporting a finding of complicated pneumoconiosis. The administrative law judge further correctly noted that, as the record does not establish that Dr. Martin is a B-reader, a Board-eligible radiologist, or a Board-certified radiologist, in order for the x-ray report to constitute evidence of complicated pneumoconiosis, it must be in substantial compliance with the quality standards governing x-rays at 20 C.F.R. §718.102 (2000).[7] Decision and Order on Remand at 8-9;

[6] Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner was totally disabled due to pneumoconiosis if the miner is suffering from a chronic dust disease of the lung which (A) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (C) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (A) or (B). *See* 20 C.F.R. §718.304.

[7] The quality standards governing x-rays at 20 C.F.R. §718.102(c), (d) and (e) (2000) provide, in pertinent part:

> (c) . . . The report shall specify the name and qualifications of the person who took the film and the name and qualifications of the physician interpreting the film. If the physician interpreting the film is a Board-certified or Board-eligible radiologist or a certified "B" reader . . . he shall so indicate. The report shall further specify that the film was interpreted in compliance with this paragraph.
>
> (d) . . . Where the chest X-ray of a deceased miner has been lost, destroyed or is otherwise unavailable, a report of a chest X-ray submitted by any party shall be considered in connection with the claim.

see Burchett, slip op. at 7, n.6. Considering Dr. Martin's April 1980 x-ray reading in light of the quality standards, in accordance with the Board's remand instructions, the administrative law judge initially noted that Dr. Martin's x-ray report consists of a one-page, preprinted, fill-in-the-blank form. Decision and Order on Remand at 7; Director's Exhibit 16 at 4. The administrative law judge also noted that the pre-printed portion of the form states, "[h]is chest X-ray, interpreted by me on this date at this hospital and of good quality shows patient to have Stage_____ Silicosis," and that in this blank Dr. Martin had written "1/1q hi Category A" silicosis. Decision and Order on Remand at 7; Director's Exhibit 16 at 4.

Contrary to claimant's argument, the administrative law judge permissibly concluded that Dr. Martin's x-ray report does not substantially comply with the quality standards at 20 C.F.R. §718.102 (2000), because it contains no additional information regarding the x-ray's quality, it does not contain the name or qualifications of the person who took the film, and it lacks "any . . . indicia of compliance with the quality standards," other than the pre-printed "boilerplate language" that the x-ray was "of good quality." *See Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Preston v. Director, OWCP*, 6 BLR 1-1229, 1-1233 (1984); *Wheatley v. Peabody Coal Co.*, 6 BLR 1-1214, 1215-16 (1984); Decision and Order on Remand at 7, 11; Director's Exhibit 16 at 4.

The administrative law judge further considered the potential applicability of *Defore v. Alabama By-Products Corp.*, 12 BLR 1-27, 1-30 (1988), in which the Board

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> (e) No chest X-ray shall constitute evidence of the presence or absence of pneumoconiosis unless it is in substantial compliance with the requirements of this section and Appendix A, except that in the case of a deceased miner where the only available X-ray is of sufficient quality for determining the presence or absence of pneumoconiosis and such X-ray was interpreted by a Board-certified or Board-eligible radiologist or a certified "B" reader . . . such X-ray shall be considered and shall be accorded such weight and probative value as is appropriate in light of all of the evidence applicable to the individual case. It shall be presumed, in the absence of evidence to the contrary, that the requirements of Appendix A have been met.

20 C.F.R. §718.102(d), (e) (2000). Although claimant contends on appeal that Dr. Martin is a Board-eligible radiologist, Claimant's Brief at 16, the Board noted in its prior Decision and Order that "Dr. Martin is neither a radiologist nor a B reader," and the record contains no evidence to the contrary. *I.B.* [*Burchett*] *v. Gum Branch Coal Co.*, BRB Nos. 08-0678 BLA and 08-0678 BLA-S, slip op. at 7, n.6 (July 22, 2009) (unpub.).

held that "the standards set forth in Section 718.102 [2000] should be used as guidelines by the administrative law judge," and that, "[i]n reviewing the x-ray evidence, the administrative law judge should determine whether the missing information is essential to the reliability or the probative value of the x-ray report."[8] Contrary to claimant's contention, the administrative law judge permissibly found that the information missing from Dr. Martin's August 1980 x-ray report is essential to determining the reliability of the x-ray, given that the United States Court of Appeals for the Sixth Circuit has acknowledged that x-rays are generally considered to be the "least accurate method" of diagnosing complicated pneumoconiosis, and given that there is no evidence that Dr. Martin has any radiological qualifications, or any expertise in the area of pulmonary disease. Decision and Order on Remand at 8, *citing Gray v. SLC Coal Co.*, 176 F.3d 382, 398-90, 21 BLR 2-615, 2-629 (6th Cir. 1999). Therefore, the administrative law judge acted within his discretion in concluding that Dr. Martin's April 1980 x-ray report is not sufficiently reliable to support a finding of complicated pneumoconiosis pursuant to 20 C.F.R. §§718.102, 718.304(a). *See Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-7 (1999)(en banc on recon.). As there exists no other evidence of complicated pneumoconiosis in the record, we affirm the administrative law judge's finding that claimant did not establish the existence of complicated pneumoconiosis and, therefore, did not invoke the irrebuttable presumption of death due to pneumoconiosis pursuant to 20 C.F.R. §718.304.

Section 411(c)(4) – Total Disability

Claimant next challenges the administrative law judge's finding that claimant did not establish that the miner was totally disabled from a respiratory or pulmonary impairment and, therefore, did not invoke the Section 411(c)(4) rebuttable presumption of death due to pneumoconiosis. Specifically, claimant contends that the administrative law judge did not accord sufficient weight to the opinion of Dr. Martin, the miner's treating physician, which she contends establishes that the miner suffered from cor pulmonale with right-sided congestive heart failure pursuant to 20 C.F.R. 718.204(b)(2)(iii).[9] Claimant's Brief at 5, 13-15. We disagree.

[8] The Board in *Defore* noted that, if the missing information is essential, an administrative law judge may reject the physician's report, while an administrative law judge may consider and accept the report if it is not essential. *Defore v. Alabama By-Products Corp.*, 12 BLR 1-27, 1-30 (1988).

[9] The administrative law judge further found that claimant did not establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii), and (iv). As

In considering the evidence of cor pulmonale at 20 C.F.R. §718.204(b)(2)(iii), the administrative law judge noted that, in his October 25, 2006 medical report, Dr. Martin stated that "[c]or [p]ulmonale was said in old records[.] Right and left heart failure." Claimant's Exhibit 1. The administrative law judge reasonably found that Dr. Martin's statement did not constitute his own diagnosis of cor pulmonale, but was merely a reference to a notation contained in the miner's medical history. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order on Remand at 13; Claimant's Exhibit 1. Contrary to claimant's argument, as the administrative law judge reasonably concluded that Dr. Martin's reference to cor pulmonale did not equate to a diagnosis of the disease, the administrative law judge was not required to evaluate Dr. Martin's opinion in light of his status as a treating physician.[10] *See* 20 C.F.R. §718.104(d)(5); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 647 (6th Cir. 2002); Decision and Order on Remand at 13; Claimant's Exhibit 1. We therefore affirm the administrative law judge's finding that claimant did not establish the existence of cor pulmonale and, therefore, did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). As claimant offers no further challenge to the administrative law judge's evaluation of the evidence relevant to the issue of total disability, we affirm the administrative law judge's finding that claimant cannot invoke the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis. 30 U.S.C. §921(c)(4).

20 C.F.R. §§718.202(a), 718.205(c) – Death Due to Pneumoconiosis

Claimant next challenges the administrative law judge's findings that the x-ray and medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4),[11] and that, therefore, claimant failed to establish that the

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claimant does not challenge these findings on appeal, they are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[10] The administrative law judge further found, and claimant does not dispute, that no other physician of record diagnosed cor pulmonale with right-sided congestive heart failure. *See Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 13.

[11] We affirm, as unchallenged, the administrative law judge's findings that, as there is no autopsy or biopsy evidence in the record, claimant cannot establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(3). *See Skrack*, 6 BLR at 1-711.

miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). 20 C.F.R. §§718.202(a), 718.205(c)(5); Claimant's Brief at 5-10.

In finding that the x-ray evidence did not establish the existence of pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge properly noted that the only x-ray evidence of record consists of Dr. Martin's April 1980 positive x-ray reading, and several x-rays contained in the treatment notes. Decision and Order on Remand at 15. Noting that he had earlier found Dr. Martin's April 1980 reading to be unreliable, pursuant to 20 C.F.R. §718.102 (2000), and noting that the treatment x-rays do not expressly diagnose pneumoconiosis,[12] the administrative law judge permissibly concluded that the x-ray evidence did not support a finding of pneumoconiosis. *See Staton*, 65 F.3d at 59, 19 BLR at 2-279; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Cranor*, 22 BLR at 1-7; Decision and Order on Remand at 15. Substantial evidence supports the administrative law judge's finding. Therefore, we reject claimant's allegations of error and affirm the administrative law judge's finding that claimant failed to meet her burden of proof pursuant to 20 C.F.R. §718.202(a)(1).

We also reject claimant's contention that the administrative law judge erred in evaluating the medical opinion evidence relevant to the existence of pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge considered the medical reports of Drs. Martin, Baker, Dahhan, and Fino. Drs. Martin and Baker diagnosed both clinical pneumoconiosis, and legal pneumoconiosis, in the form of chronic obstructive pulmonary disease due to both smoking and coal mine dust exposure. Claimant's Exhibits 2, 4. In contrast, Drs. Dahhan and Fino concluded that the miner did not have clinical pneumoconiosis or any coal mine dust-related disease of the lung. The administrative law judge discounted each of the medical opinions and concluded that claimant failed to meet her burden to establish the existence of pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(4).

Claimant contends that the administrative law judge erred in discrediting the opinions of Drs. Martin and Baker, and in crediting the opinion of Dr. Dahhan. Contrary to claimant's arguments, regarding the existence of clinical pneumoconiosis, the administrative law judge reasonably accorded no weight to Dr. Martin's diagnosis, finding it to be merely a restatement of his April 1980 x-ray interpretation, which the administrative law judge previously found to be unreliable and not credible. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Taylor v. Brown Badgett, Inc*., 8 BLR 1-405 (1985); Decision and Order on Remand at 16. The

[12] In its prior decision, the Board affirmed Administrative Law Judge Phalen's similar finding that the treatment x-rays in the record are not probative of the existence of pneumoconiosis. *Burchett*, slip op. at 7-8.

administrative law judge also permissibly discounted Dr. Baker's diagnosis of clinical pneumoconiosis, as it was also based upon Dr. Martin's discredited April 1980 x-ray interpretation. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-648-49 (6th Cir. 2003); *Hutchens v. Director, OWCP*, 8 BLR 1-16, 1-19 (1985); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984).

Relevant to the existence of legal pneumoconiosis, the administrative law judge further acted within his discretion in discounting the opinion of Dr. Martin, as unreasoned, because he provided no basis or underlying rationale for his diagnosis.[13] *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14, 22 BLR 2-537, 2-551 (6th Cir. 2002); *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-513 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 835, 22 BLR 2-320, 2-325 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); Decision and Order on Remand at 16. Finally, the administrative law judge found that Dr. Baker's opinion, that "coal dust exposure may have caused 25 to 33%" of the miner's obstructive impairment, was based on a "grossly inaccurate" smoking history of approximately 40 pack years, where the administrative law judge found that the miner smoked in excess of 100 pack years.[14] Decision and Order on Remand at 18; Claimant's Exhibit 2. The administrative law judge permissibly concluded that, as it was impossible to determine how Dr. Baker's opinion might have changed had he been aware of the miner's true smoking history, his

[13] In his report dated September 12, 2005, Dr. Martin diagnosed "complicated pneumoconiosis and/or black lung," and referenced his April 1980 x-ray reading. Director's Exhibit 16. In a report dated October 25, 2006, Dr. Martin again referenced his x-ray reading of complicated pneumoconiosis. Claimant's Exhibit 1. In a one-page report dated November 14, 2006, Dr. Martin checked a box marked "legal pneumoconiosis," while leaving a box marked "clinical pneumoconiosis" unchecked. Claimant's Exhibit 1.

[14] In discussing the possible contributing factors to the miner's chronic obstructive lung disease (COPD), Dr. Baker stated:

> It was noted by some examiners that [the miner] was a heavy smoker and by other examiners that he had never smoked. If he did smoke[] 20 to 40-pack years, this would be the primary cause of his COPD and chronic bronchitis. But as there is a synergistic effect between coal dust and cigarette smoking, the coal dust would be contributory as well.

Claimant's Exhibit 2. Based on the miner's coal mine history and a "possible 40-pack year" smoking history, Dr. Baker concluded that the miner's "coal dust exposure may have caused 25 to [33.3]% of [his] symptoms, if not more due to a synergistic effect." *Id.*

opinion was unreliable. *See Sellards v. Director, OWCP*, 17 BLR 1-77, 1-80-81 (1993); *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988); Decision and Order on Remand at 18.

The task of determining the credibility of a physician's opinion is committed to the discretion of the administrative law judge. *See Napier*, 301 F.3d at 713-14, 22 BLR at 2-551; *Stephens*, 298 F.3d at 522, 22 BLR at 2-513; *Groves*, 277 F.3d at 835, 22 BLR at 2-325. Because the administrative law judge rationally discredited the opinions of Drs. Martin and Baker, the only medical opinions supportive of a finding that the miner had pneumoconiosis, we affirm the administrative law judge's finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. We, therefore, need not address claimant's arguments regarding the administrative law judge's evaluation of employer's physicians' opinions. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Finally, as we have affirmed the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), we further affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis, pursuant to 20 C.F.R. §718.205(c). *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Accordingly, the administrative law judge's Decision and Order on Remand denying 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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JUDITH S. BOGGS
Administrative Appeals Judge